

Exhibit 30

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

)
B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
)
Plaintiff,)
) No. 2:21-cv-00316
vs.)
)
WEST VIRGINIA STATE BOARD OF)
EDUCATION, HARRISON COUNTY)
BOARD OF EDUCATION, WEST)
VIRGINIA SECONDARY SCHOOL)
ACTIVITIES COMMISSION, W.)
CLAYTON BURCH in his official)
capacity as State)
Superintendent, DORA STUTLER,)
in her official capacity as)
Harrison County)
Superintendent, and THE STATE)
OF WEST VIRGINIA,)
)
Defendants.)
)
And)
)
LAINEY ARMISTEAD,)
)
Defendant-Intervenor.)

REMOTE VIDEOTAPED DEPOSITION OF
GREGORY BROWN, Ph.D.
Friday, March 25, 2022
Volume I

Reported by:
ALEXIS KAGAY
CSR No. 13795
Job No. 5122856
PAGES 1 - 282

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON
DIVISION

B.P.J. by her next friend and)

mother, HEATHER JACKSON,)

Plaintiff,)

vs.) No. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF)

EDUCATION, HARRISON COUNTY)

BOARD OF EDUCATION, WEST)

VIRGINIA SECONDARY SCHOOL)

ACTIVITIES COMMISSION, W.)

CLAYTON BURCH in his official)

capacity as State)

Superintendent, DORA STUTLER,)

in her official capacity as)

Harrison County)

Superintendent, and THE STATE)

OF WEST VIRGINIA,)

Defendants.)

And)

LAINY ARMISTEAD,)

Defendant-Intervenor.)

Videotaped deposition of GREGORY BROWN, Ph.D.,
Volume I, taken on behalf of Plaintiff, with all
participants appearing remotely, beginning at 7:02 a.m.
and ending at 4:03 p.m. on Friday, March 25, 2022,
before ALEXIS KAGAY, Certified Shorthand Reporter
No. 13795.

1 APPEARANCES (via Zoom Videoconference):

2

3 For the Intervenor:

4 ALLIANCE DEFENDING FREEDOM

5 BY: HAL FRAMPTON

6 BY: RACHEL CSUTOROS

7 Attorneys at Law

8 20116 Ashbrook Place

9 Suite 250

10 Ashburn, Virginia 20147

11 HFRampton@adflegal.org

12

13 For West Virginia Secondary School Activities

14 Commission:

15 SHUMAN MCCUSKEY & SLICER

16 BY: ROBERTA GREEN

17 Attorney at Law

18 1411 Virginia Street E

19 Suite 200

20 Charleston, West Virginia 25301-3088

21 RGreen@Shumanlaw.com

22

23

24

25

1 APPEARANCES (Continued):

2

3 For the State of West Virginia:

4 WEST VIRGINIA ATTORNEY GENERAL

5 BY: DAVID TRYON

6 Attorney at Law

7 112 California Avenue

8 Charleston West Virginia 25305-0220

9 681.313.4570

10 David.C.Tryon@wvago.gov

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2

3 For The Plaintiff, B.P.J.:

4 COOLEY

5 BY: ANDREW BARR

6 BY: ELIZABETH REINHARDT

7 BY: KATELYN KANG

8 BY: ZOE HOLSTROM

9 BY: KATHLEEN HARTNETT

10 BY: JULIE VEROFF

11 Attorneys at Law

12 500 Boylston Street

13 14th Floor

14 Boston, Massachusetts 02116-3740

15 617.937.2305

16 ABarr@cooley.com

17 EReinhardt@cooley.com

18 EReinhardt@cooley.com

19 ZHolstrom@cooley.com

20 KHartnett@cooley.com

21 JVeroff@cooley.com

22

23

24

25

1 APPEARANCES (Continued):

2

3 For Plaintiff:

4 LAMBDA LEGAL

5 BY: SRUTI SWAMINATHAN

6 BY: AVATARA SMITH

7 BY: CARL CHARLES

8 Attorneys at Law

9 120 Wall Street

10 Floor 19

11 New York, New York 10005-3919

12 SSwaminathan@lambdalegal.org

13 ASmith@lambdalegal.org

14 CCharles@lambdalegal.org

15

16 For the Plaintiff:

17 AMERICAN CIVIL LIBERTIES UNION

18 BY: JOSHUA A. BLOCK

19 125 Broad Street

20 18th Floor

21 New York, New York 10004

22 JBlock@aclu.org

23 212.549.2500

24

25

1 APPEARANCES (Continued):

2
3 For defendants Harrison County Board of Education and
4 Superintendent Dora Stutler:

5 STEPTOE & JOHNSON PLLC

6 BY: JEFFREY M. CROPP

7 Attorney at Law

8 400 White Oaks Boulevard

9 Bridgeport, West Virginia 26330

10 304.933.8154

11 Jeffrey.cropp@steptoe-Johnson.com

12
13
14 For West Virginia Board of Education and Superintendent
15 Burch, Heather Hutchens as general counsel for the
16 State Department of Education:

17 BAILEY & WYANT, PLLC

18 BY: MICHAEL TAYLOR

19 Attorney at Law

20 500 Virginia Street

21 Suite 600

22 Charleston, West Virginia 25301

23 MTaylor@Baileywyant.com

1 Also Present:

2 LINDSAY DUPHILY - VERITEXT CONCIERGE

3

4 Videographer:

5 KIMBERLEE DECKER

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

WITNESS			EXAMINATION
---------	--	--	-------------

GREGORY BROWN, Ph.D.			
----------------------	--	--	--

Volume I			
----------	--	--	--

	BY MR. BLOCK		16
--	--------------	--	----

EXHIBITS

NUMBER	DESCRIPTION		PAGE
--------	-------------	--	------

Exhibit 64	Declaration of Gregory A. Brown,		24
	PH.D., FACSM		

Exhibit 65	Declaration of Professor Gregory		26
	Brown, Soule Matter		

Exhibit 66	Expert Declaration of Gregory A.		26
	Brown, Ph.D., FACSM, Hecox Matter		

Exhibit 67	White Paper - Concerning Male		28
	Physiological and Performance		
	Advantages in Athletic		
	Competition and the Effect of		
	Testosterone Suppression on Male		
	Athletic Advantage, Gregory A.		

Page 9

1		Brown, Ph.D., December 14, 2021	
2			
3	Exhibit 68	Video Clip	59
4			
5	Exhibit 69	Women's Sports Policy Working	111
6		Group Briefing Book a Request to	
7		Congress and the Administration	
8		to Safeguard Girls' and Women's	
9		Sport & Include Transgender	
10		Athletes	
11			
12	Exhibit 70	Commonwealth of Pennsylvania	123
13		House of Representatives	
14		Education Committee Public	
15		Hearing, Presentation on HB 972	
16		(GLEIM) Fairness in Women's	
17		Sports Act	
18			
19	Exhibit 71	"Proandrogenic and Antiandrogenic	139
20		Progestins in Transgender Youth:	
21		Differential Effects on Body	
22		Composition and Bone Metabolism"	
23			
24	Exhibit 72	The Journal of Sexual Medicine	149
25		"Transgender Health: Early	

1		Hormonal Treatment Affects Body	
2		Composition and Body Shape in	
3		Young Transgender Adolescents"	
4			
5	Exhibit 73	Brown Blog Post	161
6			
7	Exhibit 74	"Transwomen Competing in Women's	177
8		Sports: What we know, and what we	
9		don't"	
10			
11	Exhibit 75	"Re-Affirming the Value of the	201
12		Sports Exception to Title IX's	
13		General Non-Discrimination Rule"	
14			
15	Exhibit 76	"Transgender Women in the Female	209
16		Category of Sport: Perspectives	
17		on Testosterone Suppression and	
18		Performance Advantage"	
19			
20	Exhibit 77	World Rugby Transgender Women	217
21		Guidelines	
22			
23	Exhibit 78	"How does hormone transition in	219
24		transgender women change body	
25		composition, muscle strength and	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

haemoglobin? Systematic review
with a focus on the implications
for sport participation"

Exhibit 79 "Integrating transwomen and 228
female athletes with Differences
of Sex Development (DSD) into
Elite Competition: The FIMS 2021
Consensus Statement"

1 Friday, March 25, 2022

2 7:02 a.m.

3

4 THE VIDEOGRAPHER: Good morning. We are on
5 the record at 9:02 a.m. on March 25th of 2022. All 07:02:02
6 participants are attending remotely.

7 Audio and video recording will continue to
8 take place unless all parties agree to go off the
9 record.

10 This is media unit 1 of the recorded 07:02:20
11 deposition of Gregory A. Brown, Ph.D., taken by counsel
12 for the plaintiff, in the matter of B.P.J., by her next
13 friend and mother, Heather Jackson, versus
14 West Virginia State Board of Education, et al., filed
15 in the United States District Court, for the Southern 07:02:36
16 District of West Virginia, Charleston Division, Case
17 Number 2:21-cv-00316.

18 My name is Kimberlee Decker from Veritext
19 Legal Solution (sic), and I am the videographer. The
20 court reporter is Alexis Kagay. I am not related to 07:02:57
21 any party in this action, nor am I financially
22 interested in the outcome.

23 Counsel and all present will now state their
24 appearances and affiliations for the record. If there
25 are any objections to proceeding, please state them at 07:03:10

Page 13

1 the time of your appearance, beginning with the
2 noticing attorney.

3 MR. BLOCK: Good morning. My name is
4 Josh Block from the ACLU. My pronouns are he/him. And
5 I am here on behalf of the plaintiff, B.P.J. 07:03:26

6 And I'll let my co-counsel introduce
7 themselves.

8 MS. HARTNETT: Good morning. This is
9 Kathleen Hartnett from Cooley for plaintiff.

10 MR. BARR: Good morning. Andrew Barr from 07:03:38
11 Cooley, also for plaintiff.

12 MS. KANG: Good morning. Katelyn Kang from
13 Cooley, also for plaintiff.

14 MS. REINHARDT: Good morning. Elizabeth
15 Reinhardt with Cooley for plaintiff. 07:03:52

16 MS. HELSTROM: Hello. This is Zoe Helstrom
17 with Cooley, also for plaintiff.

18 COUNSEL SWAMINATHAN: Good morning. This is
19 Sruti Swaminathan from Lambda Legal on behalf of
20 plaintiff. 07:04:04

21 MR. CHARLES: Good morning. Carl Charles,
22 he/him, with Lambda Legal for plaintiff.

23 MS. SMITH-CARRINGTON: Good morning. Avatara
24 Smith-Carrington from Lambda Legal on behalf of
25 plaintiff. 07:04:18

1 MR. FRAMPTON: I -- I think that's everyone
2 for plaintiff, but if not, correct me.

3 This is Hal Frampton with Alliance Defending
4 Freedom for the intervenor.

5 MS. CSUTOROS: This is Rachel Csutoros from 07:04:29
6 Alliance Defending Freedom for the intervenor.

7 MR. TRYON: This is David Tryon with
8 West Virginia state attorney general's office on behalf
9 of the State of West Virginia.

10 MR. CROPP: This is Jeffrey Cropp on behalf of 07:04:45
11 defendants Harrison County Board of Education and
12 Superintendent Dora Stutler.

13 MS. GREEN: This is Roberta Green, Shuman
14 McCuskey Slicer, here on behalf of WVSSAC.

15 MR. TAYLOR: This is Michael Taylor, law firm 07:05:04
16 of Bailey & Wyant, on behalf of the West Virginia State
17 Board of Education and W. Clayton Burch,
18 superintendent.

19 THE VIDEOGRAPHER: Thank you.

20 Will the court reporter please swear in the
21 witness.

22
23 GREGORY BROWN, Ph.D.,
24 having been administered an oath, was examined and
25 testified as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINATION

BY MR. BLOCK:

Q Good morning, Dr. Brown. How are you today?

A I'm doing fine. Thank you. 07:05:38

How are you today, Mr. Block?

Q I'm good. I'm good.

This is our second time seeing each other
virtually for a deposition, isn't it?

A It is. It is. 07:05:48

Q Well, could you state your name for the
record, please.

A My name is Gregory Allen Brown.

Q And have you had your deposition taken before?

A Yes, I have. 07:06:04

MR. FRAMPTON: Josh, real -- real quick, just
before we get too far, I just want to memorialize for
the record, are we proceeding under the same agreement
that all objections except to form and scope are
reserved? 07:06:16

MR. BLOCK: Yes. And -- and I'd like to
actually also propose that, of course, any party is
free to object on their own, but it is also not
necessary for multiple parties to object to the same
question that -- an objection from one defendant or 07:06:33

1 intervenor will preserve the objections for everyone
2 else as well.

3 Is that also acceptable?

4 MR. FRAMPTON: That -- that's acceptable to
5 the intervenor. 07:06:51

6 MR. TRYON: This is David Tryon. That is
7 acceptable to the State.

8 MS. GREEN: This is Roberta Green. That's
9 acceptable to WVSSAC.

10 MR. CROPP: This is Jeffrey Cropp. That's 07:07:03
11 acceptable to the Harrison County Board of Education
12 and Dora Stutler.

13 MR. TAYLOR: This is Michael Taylor. That's
14 acceptable for the State Board of Education and
15 Superintendent Burch. 07:07:14

16 MR. BLOCK: Excellent.

17 BY MR. BLOCK:

18 Q So other than your deposition with me, have
19 you had any other depositions taken?

20 A No, I have not. 07:07:27

21 Q All right. Great.

22 So I'll just review with you some ground rules
23 again, which you're -- you're probably familiar with,
24 and I have three of them.

25 You know, the first is that -- actually, it's 07:07:35

Page 17

1 less applicable for a video deposition, but it's
2 important that all of your responses be verbal instead
3 of head nods so that we can have a -- a transcript of
4 your responses.

5 Does that sound good to you? 07:07:53

6 A Yes. Thank you.

7 Q Sure. The second is that we need to make sure
8 not to speak over each other. So if you could wait for
9 me to complete my question before answering and I'll
10 wait for you to complete your answer before I ask 07:08:06
11 another question.

12 Does that sound fair?

13 A I'll do my best.

14 Q So will I.

15 And the third is that, you know, as always, 07:08:16
16 it's my job to ask questions that you understand. So
17 if there's anything about my question you don't
18 understand, I'm going to rely on you to explain to me
19 that you don't understand it, and I will do my best to
20 rephrase it. But if you answer the question, I'm going 07:08:32
21 to assume that meant that you understood what I was
22 saying, okay?

23 A Sounds fair.

24 Q Terrific.

25 All right. How did you prepare for the 07:08:44

1 deposition today?

2 A Reviewed what I had written for my
3 declaration, the expert report. I had a good
4 breakfast, got a good night's sleep. I have met with
5 attorneys for Alliance Defending Freedom and 07:09:03
6 David Tryon to brief me on, you know, what happens in a
7 deposition, what I should expect.

8 MR. FRAMPTON: I'm going to instruct the
9 witness, you don't -- anything that we discussed is
10 privileged. So you can certainly tell him that you met 07:09:16
11 with us, but the substance of that discussion should
12 not be told.

13 THE WITNESS: Okay.

14 BY MR. BLOCK:

15 Q Did -- in preparation for the deposition, did 07:09:25
16 you review anything that was not cited in your report?

17 A Yes. Like previous exercise physiology
18 textbooks, lots of other things that probably weren't
19 cited in there, just in the course of general
20 knowledge. 07:09:47

21 Q And -- and you -- you've reviewed those to
22 refresh your understanding of them in preparation for
23 today's deposition?

24 A Yes. And also in preparation for teaching my
25 classes and those types of things. 07:10:00

Page 19

1 Q Did you conduct any additional research to
2 prepare for today's deposition?

3 A Can you explain what you mean by "research"?

4 Q Well, I guess, did you look for new articles
5 in the field or anything like that in preparation for 07:10:17
6 the deposition?

7 A Yes. In preparation for the deposition, I
8 have looked to see if there have been any relevant new
9 publications, and I haven't come up with any that I
10 haven't cited in the deposition. 07:10:33

11 Q Great. Have you been retained as an expert
12 witness before?

13 A Yes.

14 Q I want to get a complete list of all of the
15 times you've been retained as an expert witness. 07:10:46

16 So could you tell me, to the best of your
17 recollection, the first time you were retained as an
18 expert witness?

19 A That would be for the case of Soule versus the
20 Connecticut Interscholastic Athletic Association (sic). 07:11:05

21 Q And who retained you for that case?

22 A Alliance Defending Freedom.

23 Q Great. What is the next case in which you
24 were retained as an expert witness?

25 A The next case is Hecox versus Little in the 07:11:17

1 state of Idaho.

2 Q And who retained you as an expert witness in
3 that case?

4 A That was the Idaho attorney general's office.

5 Q And what's the next case where you were 07:11:31
6 retained as an expert witness?

7 A The next case is in Florida, and I apologize,
8 I cannot remember the names and initials on that versus
9 State of Florida.

10 Q And what's the general subject of that 07:11:42
11 litigation?

12 A Similar to this one, State of Idaho, as
13 regarding a state law on women's participation in
14 women's sports.

15 Q A Florida state law? 07:11:57

16 A Yes.

17 Q And who retained you in that case?

18 A Andy Bardos, if I remember correctly on his
19 last name. I apologize if I don't get the
20 pronunciation correctly. And that is -- they're 07:12:16
21 working for the State of Florida.

22 Q Is there any other case in which you've been
23 retained as an expert witness?

24 A I have agreed to serve as an expert witness in
25 the state of Arkansas if there is a case that were to 07:12:35

Page 21

1 come forth there.

2 Q Related to sports?

3 A Yes. Yeah, same topic.

4 Q But not as an expert in any other litigation

5 in Arkansas about other types of legislation; right? 07:12:47

6 A That's correct.

7 Q Is there any other case in which you've been

8 retrained as an expert witness?

9 A Just want to verify that I said them. So

10 Soule versus CIAC, Idaho, Florida, Arkansas and then 07:13:05

11 the current case.

12 Q Okay. How about in Tennessee, are you an

13 expert witness in Tennessee?

14 A No.

15 Q Have you been retained as a nontestifying 07:13:27

16 expert witness in connection with any litigation?

17 A No.

18 Q Okay. All right. So I'm going to just review

19 with you some previous expert reports you filed.

20 Actually, before I do that, have you filed an 07:13:43

21 expert report yet in the Florida litigation?

22 A No.

23 Q Okay. All right. So -- so this is going to

24 be the moment of truth. I'm going to attempt to move a

25 document into Exhibit Share, and we'll see -- we'll see 07:13:57

Page 22

1 how that -- that works. All right.

2 All right. Let's see.

3 Actually, first, I'm going to try to get
4 your -- your current expert report into here. Just
5 give me half a second. 07:14:26

6 A Take your time.

7 Q Yeah, no, I might need to take my time.

8 All right. No, here's the one in your case.

9 All right. Moving it into our "Marked
10 Exhibits" folder. And in a moment, like when you 07:14:40
11 refresh, you should hopefully see a document.

12 A So is the document 2022.02.23 Brown Expert
13 Report PDF?

14 Q Yes. And -- and just --

15 MR. BLOCK: Lindsay, does that automatically 07:15:09
16 get marked as a -- a sequential exhibit number?

17 MS. DUPHILY: It -- I -- I'll fix it. And
18 I'll show you -- you need to mark it as a -- introduce
19 it as an exhibit. You just moved it.

20 MR. BLOCK: I just moved it. Okay. So sorry. 07:15:22
21 How -- how do we --

22 MS. DUPHILY: I can -- I can correct it. Go
23 ahead and continue, and I will correct it.

24 MR. BLOCK: Okay. And -- thanks.

25 Will you be able to do that for the subsequent 07:15:28

Page 23

1 ones, too?

2 And sorry for my incompetence.

3 MS. DUPHILY: Why don't I just -- I will input
4 the next ones and then show you on the break how to do
5 it. 07:15:39

6 (Exhibit 64 was marked for identification
7 by the court reporter and is attached hereto.)

8 MR. BLOCK: Terrific. Thank you so much.

9 BY MR. BLOCK:

10 Q All right. Do you recognize this document? 07:15:41

11 A Yes, I do.

12 Q What is it?

13 A It is my expert declaration for the case of
14 B.P.J. versus West Virginia.

15 Q And when is it -- when is it dated? 07:16:01

16 A It states: "Executed on February 23, 2022."

17 Q And that's your signature next to it?

18 A Yes, that is.

19 Q Okay. So now I'm just going to take you
20 through some previous reports that you filed. 09:16:18

21 So if you hit refresh, you should see another
22 document titled "Brown PI decl."

23 A Yes.

24 Q Great. Do you recognize that document?

25 A Yes, I do. 09:17:01

Page 24

1 Q What is it?

2 A That is my expert declaration in the case of
3 Soule versus Connecticut Association of Schools.

4 Q Great. And when is that dated?

5 A Dated February 12th, 2020. 09:17:22

6 Q Terrific. Let me take a look at that.

7 All right. Let me show you another one, I'm
8 sorry.

9 MS. DUPHILY: Maybe -- maybe we should
10 quickly, it's up to you -- 09:17:40

11 MR. BLOCK: Yeah, let's do a little bit --
12 let's go off the record, and you can give me a
13 tutorial, and then we can be -- save time.

14 THE VIDEOGRAPHER: We are off the record at
15 9:18 a.m. 09:17:49

16 (Recess.)

17 THE VIDEOGRAPHER: We are on the record at
18 9:21 a.m.

19 BY MR. BLOCK:

20 Q All right. Dr. Brown, during our break, we 09:21:05
21 sort of recorrected and marked the exhibits we
22 previously looked at.

23 Could you, just for the record, look at the
24 document marked Exhibit 64, please.

25 A All right. Exhibit 064. 09:21:26

1 Q And what is that exhibit?

2 A That is my expert declaration for B.P.J.

3 versus West Virginia.

4 (Exhibit 65 was marked for identification

5 by the court reporter and is attached hereto.) 09:21:35

6 BY MR. BLOCK:

7 Q Terrific. And -- now, can you look at the

8 document marked Exhibit 65, please.

9 A All right. 065.

10 Q And what is that -- 09:21:52

11 A Yes --

12 Q What -- what -- what is that document?

13 A That is my declaration in the case of

14 Soule versus Connecticut Association of Schools.

15 MR. BLOCK: Great. All right. And now I'm 09:22:10

16 going to give you another document to look at in a

17 minute. In your folder should be appearing a document

18 marked Exhibit 66.

19 (Exhibit 66 was marked for identification

20 by the court reporter and is attached hereto.) 09:22:16

21 BY MR. BLOCK:

22 Q Could you let me know when you see that

23 document?

24 A Exhibit 066 - WV AG?

25 Q Yes. 09:22:29

Page 26

1 A And on the first page of that, it's got, in
2 large bold capital letters, "Exhibit B"?

3	Q	Uh-huh.
---	---	---------

4	A	Okay.
---	---	-------

5	Q	Could you go to the second page?	09:22:46
---	---	----------------------------------	----------

6	A Yes.
---	--------

7 Q All right. And could -- do you recognize this
8 document?

9	A Yes, I do.
---	--------------

10	Q And what is it?	09:22:50
----	-------------------	----------

11 A That is my expert declaration for the case of
12 Hecox versus Little.

13 Q Terrific. And if you scroll down to -- to
14 near the end, which I -- if we can find the date on
15 which that one was executed. It should be on page 69 09:23:05
16 of the PDF.

17 Are you -- do you see it?

18 A I'm still scrolling.

19 Q All right. You can also type in "69" in
20 the -- the -- the top box, if that make it easier too. 09:23:33

21 A Sorry. Sorry, I tried to type in "69," and I
22 accidentally Google searched for that.

23 Q Oh, well. Have you gotten to it yet?

24	A Still scrolling.
----	--------------------

25	O All right.	09:24:19
----	--------------	----------

1 MS. DUPHILY: If you download these exhibits,
2 you can also access them easier with your software.

3 MR. FRAMPTON: I think he's almost there.

4 THE WITNESS: All right. I see my signature

5 page. Well, yeah, executed 3rd June 2020. 09:24:34

6 BY MR. BLOCK:

7 Q Terrific. And then for this litigation of
8 B.P.J., at the PI stage, you also submitted a copy of
9 this Hecox declaration; is that right?

10 A Yes. 09:24:53

11 MR. BLOCK: Okay. And then I want to show you
12 another document in a second.

13 So this document is going to be marked, as
14 soon as I'm able to mark it, as Exhibit 67. Let me
15 know when it's visible for you. 09:25:36

16 (Exhibit 67 was marked for identification
17 by the court reporter and is attached hereto.)

18 THE WITNESS: All right. Exhibit 067 -
19 Gregory Brown Male Athletic --

20 BY MR. BLOCK: 09:25:49

21 Q Yes.

22 A Yes.

23 Q What is this document?

24 A That is a "White Paper Concerning Male
25 Physiological and Performance Advantages in Athletic 09:25:58

Page 28

1 Competition and The Effect of Testosterone Suppression
2 on Male Athletic Advantage."

3 Q And it's dated December 14th, 2021; correct?

4 A That is correct.

5 Q Now, this document was not prepared as an 09:26:11
6 expert report in -- in any litigation, was it?

7 MR. FRAMPTON: Object to the form.

8 BY MR. BLOCK:

9 Q Why did you prepare this document?

10 A I was asked by Alliance Defending Freedom to 09:26:25
11 prepare a white paper.

12 Q Okay. And what is a -- a white paper as
13 opposed to an expert report?

14 MR. FRAMPTON: Same objection.

15 Go ahead. 09:26:36

16 THE WITNESS: White paper is often used by an
17 organization, a company, something like that, for
18 gaining insight or information on a topic.

19 BY MR. BLOCK:

20 Q Okay. So did you -- what did you understand 09:26:48
21 to be the -- the purpose of this white paper?

22 A My understanding was that this was for
23 Alliance Defending Freedom and affiliated and interest
24 organizations to be able to review the research that I
25 summarize in that paper. 09:27:10

Page 29

1 Q Okay. And did you -- did you have an
2 understanding that this white paper would be used for
3 any lobbying purposes?

4 MR. FRAMPTON: Object to the form.

5 BY MR. BLOCK: 09:27:25

6 Q You can answer, if you understand.

7 A My understanding was that Alliance Defending
8 Freedom could do it with what they wanted and people
9 could ask them for it for purposes that people want to
10 use it for. 09:27:38

11 Q But did you -- so did you know one way or
12 another whether the -- the document would be used for
13 purposes of lobbying?

14 A I assumed that it would be introduced to
15 people who are interested in what the science says on 09:27:57
16 the matter of transgender athletes competing in women's
17 sports.

18 Q And those would include legislators?

19 A Yes.

20 Q Okay. And, in fact, you have testified in 09:28:11
21 support of legislation to restrict the ability of
22 transgender girls and women to participate in women's
23 sports; is that right?

24 MR. TRYON: Objection --

25 MR. FRAMPTON: Object to the form. 09:28:26

Page 30

1 MR. TRYON: -- terminology.

2 MR. FRAMPTON: Josh, real quick, could we do
3 our usual standing objection on terminology so that we
4 don't have to jump in on that every time?

5 MR. BLOCK: You know -- yes. Yes, you can. 09:28:37

6 I -- I will have some questions on that, and you can --
7 you -- you can -- if we could -- I'll give you that
8 standing objection, but the witness has also used some
9 of these terms himself in written reports, so I'm -- I
10 want to have a little colloquy with him about that. 09:28:57

11 BY MR. BLOCK:

12 Q But -- but in the meantime, you -- you have in
13 fact testified in support of legislation similar to
14 the -- the legislation at issue in this case; is that
15 right? 09:29:13

16 MR. FRAMPTON: Object to the form.

17 Go ahead.

18 THE WITNESS: Yes, I have testified in front
19 of legislative bodies regarding legislation clarifying
20 the participation of biological females in women's 09:29:25
21 sports.

22 BY MR. BLOCK:

23 Q The participation of biological females, or
24 did you mean -- did you mean to say transgender females
25 or, to use your language, biological males? I just 09:29:36

Page 31

1 want to know the -- want to make sure you spoke
2 correctly.

3 A The legislation was to limit the participation
4 in girls and women's sports to biological females.

5 Q Great. And so where -- which states did you 09:29:50
6 testify in -- in support of legislation?

7 A I may not be able to remember all of them. I
8 will give you my best recollection.

9 Ohio, Pennsylvania, Texas, South Dakota,
10 Maine, North Carolina are ones that I think I testified 09:30:14
11 either in person or through Zoom.

12 Q And who asked you to testify in each of those
13 states?

14 A That would vary from one state to the next.

15 Q Okay. So let -- let's take them one at a 09:30:36
16 time.

17 In Ohio, who asked you to testify?

18 A Center for Christian Virtue.

19 Q And in Texas, who asked you to testify?

20 A Texas Values, if I remember correctly, is 09:30:50
21 their name.

22 Q And in North Carolina, who asked you to
23 testify?

24 A I can't remember their name exactly, but it
25 was something along North Carolina Family Values, 09:31:04

Page 32

1 something like that.

2 Q In Pennsylvania, who asked you to testify?

3 A Pennsylvania Family Alliance, if I remember
4 correctly.

5 Q And in Maine, who asked you to testify? 09:31:17

6 A That, I think, was Save Women's Sports.

7 Q And do you know whether the legislatures in
8 any of those states received copies of your white
9 paper?

10 A I do not know if they received copies of my 09:31:32
11 white paper.

12 Q When you testified in those states, did you
13 refer to any of the analysis or research you conducted
14 in the white paper?

15 A I -- many of those were testified last year 09:31:47
16 before I had completed the white paper.

17 Q So what about the ones that were after you had
18 completed the white paper?

19 A After completing the white paper, I know I had
20 referred to my previous expert declaration in 09:32:04
21 Connecticut and Idaho. I don't remember if I referred
22 specifically to the white paper.

23 Q So in Pennsylvania, you don't know if the
24 Pennsylvania legislature had a copy of your white paper
25 or not? 09:32:21

Page 33

1 A No. That was before I had written the white
2 paper.

3 Q So when did you -- during what period of time
4 did you write the white paper?

5 A Well, I started working on it essentially as 09:32:30
6 soon as I had finished the declaration for Idaho, just
7 as -- you know, trying to update as new research or new
8 information became available. And so it was over the
9 course of a year and a half, year and three-quarters
10 that I was working on the -- the white paper. 09:32:50

11 Q And had ADF asked you to -- to create the
12 right -- excuse me -- the white paper a year and a half
13 before the publication date?

14 MR. FRAMPTON: Object to the form.

15 THE WITNESS: No. I was just updating the 09:33:05
16 information so that I would be current on the topic.

17 BY MR. BLOCK:

18 Q And so when were you asked to -- to write down
19 that information in the form of a white paper?

20 A Sometime this last fall. I can't remember. 09:33:19
21 September, October, somewhere in those lines, but I
22 cannot remember exactly.

23 Q Okay. Were you paid for -- to write the white
24 paper?

25 A No, I was not. 09:33:40

1 Q So you have disclosed in your report that your
2 hourly rate for preparing your expert report; is that
3 right?

4 A That is correct.

5 Q But is it fair to say that a substantial 09:33:56
6 portion of the expert report was based on the white
7 paper?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: That would be fair to say that.

10 BY MR. BLOCK: 09:34:05

11 Q Okay. So to the extent that any of the work
12 in the expert report was already conducted for the
13 white paper, then that was essentially done for free;
14 is that fair?

15 MR. FRAMPTON: Same objection. 09:34:19

16 Go ahead.

17 THE WITNESS: Yes, it would be fair to say
18 that the white paper was not paid for, for my work on
19 that, and so overlap between the white paper and the
20 expert report was primarily volunteer work. 09:34:30

21 BY MR. BLOCK:

22 Q And when you first became interested in the
23 topic of the participation of transgender people in
24 sports, you were the person who reached out to ADF; is
25 that right? 09:34:46

1 A That is correct.

2 Q And why did you do that?

3 A I had seen a news report about the Soule
4 versus Connecticut case and -- well, a -- a report. I
5 guess I shouldn't say "news" because I can't remember 09:35:00
6 where I saw it. And so I reached out to Alliance
7 Defending Freedom to see if I could be of help.

8 Q So you -- you personally feel strongly about
9 this issue; is that fair?

10 MR. FRAMPTON: Object to the form. 09:35:16

11 THE WITNESS: I don't know that I would
12 characterize my interest as a feeling so much as an
13 intellectual and professional interest.

14 BY MR. BLOCK:

15 Q Is there any other circumstance in which 09:35:25
16 you've reached out to an organization to volunteer
17 yourself as an expert source?

18 A Yes.

19 Q What -- can you tell me what those situations
20 are? 09:35:47

21 A I have reached out to legislators in the state
22 of Nebraska to state that I am an exercise physiologist
23 and would be willing to help if they have questions on
24 litigation in this -- or legislation in this area, not
25 just trans women's -- transgender individuals in 09:36:07

Page 36

1 sports, but relative to my professional expertise in
2 exercise physiology.

3 Q Okay. Any other instance?

4 A I am trying to remember.

5 I -- I can't remember others. They may have 09:36:30
6 happened, where I reached out and did not get a
7 response.

8 Q But sitting here today, you can't remember
9 what those other instances were?

10 A That is correct. 09:36:41

11 Q Okay. And you -- you're not sure that there
12 were other instances; is that right?

13 A That is correct.

14 Q All right. So that -- that's all my questions
15 on that topic. 09:36:56

16 I do have some questions just about
17 terminology here.

18 You know what the term "cisgender" means;
19 right?

20 MR. FRAMPTON: Object to the form. 09:37:05

21 THE WITNESS: Cisgender means a person whose
22 gender identity aligns with their biology.

23 BY MR. BLOCK:

24 Q And you don't have any objection to using the
25 word "cisgender," do you? 09:37:17

Page 37

1 A Yes, I do.

2 Q You've used the word "cisgender" in other
3 publications, haven't you?

4 A I have.

5 Q Okay. Why did you use the word "cisgender" in 09:37:28
6 those publications?

7 A Because it is a frequently used term in the --
8 in this field, and so it is probably the appropriate
9 term to use.

10 Q So why do you have an objection to using that 09:37:42
11 term in the deposition if -- if that's the appropriate
12 term to use?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: I know of individuals who do not
15 like the term "cisgender" because when it is applied in 09:38:00
16 the term such as "cis male" or "cis female," they
17 consider it to be infringing upon their identity as
18 male or female and the "cis" is unnecessary.

19 BY MR. BLOCK:

20 Q Do you consider the word -- the term 09:38:20
21 "cisgender male" to be infringing upon your identity as
22 a male?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: No, I do not.

25 ///

1 BY MR. BLOCK:

2 Q Okay. Who are the individuals that -- that
3 you know that view the term "cisgender" as infringing
4 on their own identity?

5 A I could not tell you every person I know that 09:38:43
6 states that. I have colleagues and coworkers that have
7 stated that to me in private conversations, family
8 members that have stated that to me in private
9 conversations. Even students have stated to me that
10 they do not like being referred to as cisgender. 09:39:02

11 Q And have any of those people, to the best of
12 your knowledge, been directly referred to as being
13 cisgender?

14 A To my knowledge, yes, they have.

15 Q Okay. So -- but you -- you personally don't 09:39:19
16 view the term "cisgender male" as infringing on your
17 own identity; correct?

18 A That is correct.

19 Q Okay. So if I use the term "cisgender" during
20 this deposition, you'll understand what I'm talking 09:39:34
21 about; correct?

22 A Yes, I understand it is the term commonly used
23 in this type of matter, legally and professionally.

24 Q Okay. And if -- if I ask you to clarify
25 whether a particular statement that you made is 09:39:50

Page 39

1 referring to cisgender males, you -- you would be able
2 to clarify that for me; correct?

3 MR. FRAMPTON: Object to the form.

4 THE WITNESS: Yes, it is my understanding that
5 a cisgender male is an individual who is biologically 09:40:04
6 male and their gender identity is male.

7 BY MR. BLOCK:

8 Q And you know what the term "transgender"
9 means; right?

10 MR. FRAMPTON: Same objection. 09:40:15

11 THE WITNESS: Yes.

12 BY MR. BLOCK:

13 Q What does it mean?

14 A Transgender is for someone whose gender
15 identity does not align with their biological sex. 09:40:25

16 Q And you don't have any objection to using the
17 word "transgender" in this deposition, do you?

18 A No, I do not.

19 Q Okay. And you've used the word "transgender"
20 in your own writings, haven't you? 09:40:38

21 A That is correct.

22 Q Okay. Do you know what the term "transgender
23 woman" means?

24 MR. FRAMPTON: Same objection.

25 THE WITNESS: I get confused with transgender 09:40:45

Page 40

1 woman sometimes because I'm not sure if that means a
2 trans woman or someone who is transgender that
3 identifies as a woman.

4 Does that make sense?

5 BY MR. BLOCK: 09:41:00

6 Q Yeah. Well, so do you know what the term
7 "trans woman" means?

8 A Yes, I do.

9 Q Okay. What -- what does the word "trans
10 woman" mean to you? 09:41:09

11 A A trans woman is an individual who is
12 biologically male but whose gender identity is that of
13 a woman.

14 Q And you've used the term "trans woman" in your
15 writings, haven't you? 09:41:19

16 A That is correct.

17 Q Okay. So if I ask you to clarify whether the
18 people you refer to in a question are trans women,
19 you'll be able to clarify that for me?

20 MR. FRAMPTON: Object to the form. 09:41:34

21 THE WITNESS: Yes, I will do my best.

22 BY MR. BLOCK:

23 Q Okay. And do you know what the term
24 "transgender girl" means?

25 A Same as with transgender woman, it is 09:41:42

Page 41

1 sometimes confusing to me if they mean if this is a boy
2 that identifies as girl or a girl that identifies as
3 boy.

4 Q How about if I use the term "trans girl,"
5 will -- do you understand what that would mean? 09:42:01

6 A Yes, I understand "trans girl."

7 Q Okay. And what does trans girl mean to you?

8 A A trans girl is a juvenile/youth/child whose
9 biological sex is male but who identifies as a girl.

10 Q Okay. You've been using the phrase 09:42:18
11 "biological sex"; correct?

12 A That is correct.

13 Q What is your understanding of what the term
14 "biological sex" means?

15 A So sex is a biological variable. Sex is 09:42:29
16 determined at conception with the conferral of sex
17 chromosomes.

18 Q And is it your understanding that "biological
19 sex" refers to anything other than chromosomes?

20 A Yes. 09:42:53

21 Q So what else besides chromosomes does the term
22 "biological sex" refer to?

23 A So if we are referring to a person who is a
24 biological male, they would have sex chromosomes of
25 male and their body system of organization, 09:43:08

1 anatomically and physiologically, would be around the
2 production of small gametes, which means sperm.

3 Q And how would you refer to the biological sex
4 of someone with complete androgen insensitivity
5 syndrome? 09:43:32

6 MR. FRAMPTON: Object to the form.

7 THE WITNESS: My understanding of someone with
8 complete androgen insensitivity syndrome is they are
9 biologically male, but they are not receptive to
10 androgens, but their body is still organized around the 09:43:43
11 production of sperm.

12 BY MR. BLOCK:

13 Q And how would you refer to the biological sex
14 of someone with XXY chromosomes?

15 A If I remember correctly -- 09:43:59

16 MR. TRYON: I would like to just object to the
17 scope.

18 Thank you.

19 MR. FRAMPTON: Objection; form, scope.

20 THE WITNESS: If I remember correctly, XXY is 09:44:08
21 Turner syndrome, in which a person is biologically
22 male. They have an extra X chromosome, but they are
23 still male.

24 BY MR. BLOCK:

25 Q So you define biological sex as male if there 09:44:22

Page 43

1 is a Y chromosome present?

2 MR. FRAMPTON: Object to the form, scope.

3 THE WITNESS: That is the beginning of sex
4 determination, is if there is a Y or an X chromosome.

5 BY MR. BLOCK: 09:44:44

6 Q Right. So as to -- to clarify, so as long as
7 there's a Y chromosome, you, in your understanding of
8 the term "biological sex," would view that person as
9 being biologically male?

10 MR. FRAMPTON: Same objections, form and 09:44:56
11 scope.

12 Go ahead.

13 THE WITNESS: That is my understanding, yes.

14 BY MR. BLOCK:

15 Q Okay. And when -- do you have any opinions on 09:45:02
16 whether a person with complete androgen insensitivity
17 syndrome should be allowed to play on sports teams for
18 girls and women?

19 MR. FRAMPTON: Objection; form and scope.

20 Go ahead. 09:45:28

21 THE WITNESS: So situations such as complete
22 androgen insensitivity syndrome is very debated in the
23 sports science community right now on how best to
24 handle those individuals and where they should
25 participate in sports. 09:45:41

Page 44

1 BY MR. BLOCK:

2 Q And what's your opinion?

3 MR. FRAMPTON: Same objections.

4 THE WITNESS: So I have been retained as an
5 expert witness in this matter primarily dealing with 09:45:49
6 biological male and biological female and not as an
7 expert on disorders or differences of sexual
8 development. And so I would say I probably would not
9 be the best person to offer a statement on where
10 someone with CAIS should participate. 09:46:05

11 BY MR. BLOCK:

12 Q But you just testified earlier that you view
13 someone with -- with CAIS as being a biological male,
14 isn't that so?

15 A That is correct. 09:46:18

16 Q And so if you're providing expert testimony on
17 the participation of biological males, wouldn't that
18 include testimony about a biological male with -- in
19 your words -- with CAIS?

20 MR. FRAMPTON: Objection; form and scope. 09:46:33

21 THE WITNESS: If I had been asked to provide
22 expert information on that matter, I could perhaps look
23 more into it, but I have not been asked to provide
24 expert witness, expert statement on where individuals
25 with disorders/differences of sexual development should 09:46:52

Page 45

1 participate.

2 BY MR. BLOCK:

3 Q Okay. So you -- you have no expert opinion on
4 the participation of people with DSDs in sports for
5 girls and women; right?

09:47:05

6 MR. FRAMPTON: Objection; form and scope.

7 Go ahead.

8 THE WITNESS: In my declaration, there is a
9 small statement in there about DSDs, and I will stand
10 by that statement.

09:47:15

11 BY MR. BLOCK:

12 Q All right. Well, let's look to that.

13 If you could turn to that -- that exhibit
14 and -- and identify for me the statement about DSDs.

15 A Which exhibit number is that?

09:47:34

16 Q That's a good question. I think it's Exhibit
17 Number -- separate windows are tough. I believe it's
18 the first one up there, Exhibit 64.

19 So it might be in paragraph 4 of your report,
20 if you could look at that.

09:48:20

21 A All right. I am looking at paragraph 4.

22 Q Okay. Is this the reference to DSDs that
23 you're -- that you were referring to just now?

24 A That is correct.

25 Q Okay. So the -- the first sentence -- the

09:48:31

Page 46

1 first two sentences of that paragraph say (as read):

2 "Although disorders of sexual

3 development (DSDs) are sometimes

4 confused with discussions of

5 transgender individuals, the two are

09:48:43

6 different phenomena. DSDs are

7 disorders of physical development.

8 Many DSDs are 'associated with genetic

9 mutations that are now well known to

10 endocrinologists and geneticists.'" "

09:48:57

11 Did I read that correctly?

12 A Yes, you did.

13 Q Okay. And so that's the extent of your expert

14 testimony about DSDs?

15 A That is correct.

09:49:07

16 Q Okay. Do you know if complete androgen

17 insensitivity syndrome is associated with a genetic

18 mutation?

19 MR. FRAMPTON: Object to the form.

20 THE WITNESS: I will stand by that statement

09:49:24

21 which is a quote from the endocrinology --

22 Endocrine Society.

23 BY MR. BLOCK:

24 Q But sitting here today, you don't know whether

25 CAIS is associated with a genetic mutation, do you?

09:49:32

Page 47

1 MR. FRAMPTON: Same objection.

2 THE WITNESS: I do not know off the top of my
3 head.

4 BY MR. BLOCK:

5 Q Okay. So -- so to the best of your knowledge, 09:49:44
6 does H.B. 3293 make any distinction between people with
7 DSDs and people who are transgender?

8 MR. FRAMPTON: Objection; form and scope.

9 THE WITNESS: I would need to refresh my
10 reading on that bill to see what it states on that 09:50:06
11 matter.

12 BY MR. BLOCK:

13 Q So -- but the scope of your expert testimony,
14 when you provide opinions about people who, in your
15 language, are biological males, you are limiting your 09:50:14
16 expert opinion to people who are biological males
17 who -- who are either cisgender males or trans girls
18 and trans women; is that right?

19 MR. FRAMPTON: Same objections.

20 THE WITNESS: Can you please restate the 09:50:39
21 question for me?

22 BY MR. BLOCK:

23 Q Yeah. So -- so you're providing testimony
24 about, quote, biological males; correct?

25 A Biological males and biological females. 09:50:46

Page 48

1 Q Okay. So in terms of biological males, the
2 only biological males you're addressing in your
3 testimony, to -- to use your phrase, biological males,
4 are cisgender boys and men and trans girls and women,
5 but not any biological males, in your language, that 09:51:07
6 have DSDs; is that fair?

7 MR. FRAMPTON: Objection; form and scope.

8 Go ahead.

9 THE WITNESS: Yes, I was not asked to offer
10 expert opinion on differences or disorders of sexual 09:51:17
11 development.

12 BY MR. BLOCK:

13 Q All right. Including people who you consider
14 to be biological males who have DSDs; correct?

15 MR. FRAMPTON: Same objection. 09:51:28

16 THE WITNESS: That is correct.

17 BY MR. BLOCK:

18 Q Okay. Do you know what the term "sex assigned
19 at birth" refers to?

20 A Yes, I understand the term "sex assigned at 09:51:47
21 birth."

22 Q Okay. So -- so if I use the term "sex
23 assigned at birth," you can understand what I'm saying?

24 A Yes, I can understand what you're saying.

25 Q Okay. Great. 09:51:56

1 I have some questions just about your
2 education and research background, but, you know, I'd
3 prefer not to belabor them by going through your CV
4 line by line. So I'm going to ask you questions, and
5 if you think you need to refer specifically to your CV, 09:52:20
6 we can do that, but I'm hoping that's not necessary.

7 So as part of your formal education, you never
8 took any courses regarding transgender people; is that
9 right?

10 A I did not take a course where the title of the 09:52:34
11 course was "Transgender Individuals."

12 Q Okay. And did you take a course where
13 transgender individuals were discussed?

14 A Yes.

15 Q And how many courses? 09:52:52

16 A That would be difficult to say. To give a
17 number, I mean, I would be speculating right now. It's
18 been 20 years.

19 Q Do you -- do you have any specific
20 recollection of any courses where transgender people 09:53:10
21 were discussed?

22 A I am pretty sure that transgender individuals
23 were discussed in the undergraduate Abnormal Psychology
24 class I took. Very possibly in General Psychology.
25 Possibly discussed in any of the numerous physiology 09:53:25

1 classes as an undergraduate or graduate student.

2 Possibly in the endocrinology class as a graduate
3 student.

4 Q This is all just possibly; right? You don't
5 have a specific recollection? 09:53:44

6 A Just thinking, also some of the sociology
7 classes may have included it. But, again, it might
8 have; it might not have been. And also, whether that
9 was a discussion that the instructor initiated or the
10 students initiated, I couldn't testify at this point. 09:54:00

11 Q Okay. You received your undergrad degree in
12 1997; right?

13 A That is correct.

14 Q Do you -- do you think it's -- it's plausible
15 that you had a lot of discussions about transgender 09:54:11
16 people from 1993 to 1997?

17 A Yes, it's very plausible.

18 Q Okay. Have you ever -- as part of your --
19 obtaining any -- any of your degrees, did you ever
20 conduct any research concerning transgender people? 09:54:32

21 A Can you clarify what you mean by "research"?

22 Q I -- I mean original research, where you have
23 a hypothesis and you test it.

24 A So, no, I did not conduct any primary research
25 on transgender individuals. 09:54:55

Page 51

1 Q Okay. Did you conduct any other form of
2 research other than what you referred to as primary
3 research?

4 A I probably looked for research papers or maybe
5 saw research papers on transgender individuals. Again, 09:55:07
6 it may have been as part of an assigned reading in a
7 class, or it may have been something come across in
8 other reading for general knowledge.

9 Q You're just saying that this could have
10 happened, but you don't have a specific recollection of 09:55:20
11 it, do you?

12 A That is correct. I did not write down in a
13 diary when I would read a paper.

14 Q Well, no, but you -- sitting here today, you
15 don't have any recollection of ever reading a paper on 09:55:30
16 transgender people as part of obtaining your
17 undergraduate, your Master's or your Ph.D. degrees;
18 correct?

19 A I don't think that's what I said.

20 Q Well, so -- 09:55:44

21 A I think I said I -- I might have. I didn't
22 say that I did not.

23 Q Well, but you don't have any affirmative
24 memory of doing so?

25 MR. FRAMPTON: Object to the form. 09:55:55

1 THE WITNESS: What do you mean by "affirmative
2 memory"?

3 BY MR. BLOCK:

4 Q Well, by -- by saying you might have, that --
5 that's different to me than saying you remember doing 09:56:04
6 it in some form, but don't remember the exact time or
7 place. So I'm trying to clarify whether you remember
8 doing it, but can't, you know, put your finger on
9 exactly when it happened, or whether you're saying you
10 can't rule out the possibility that you did it. 09:56:20

11 So are you saying that you can't rule out the
12 possibility that you did it?

13 A So I am saying that it's very likely that I
14 had discussions in classes on transgender individuals.
15 It's very likely that there was a paper that I read or 09:56:35
16 more than one paper regarding transgender individuals,
17 possibly even a textbook chapter.

18 Q Okay. And do you consider reading a textbook
19 chapter or paper for class to be academic research?

20 A Reading a scholarly paper would be considered 09:56:56
21 academic research as it could lead to something like a
22 literature review, a meta-analysis, and it is an
23 essential part of the research process.

24 Q Right. But you didn't do any reading as part
25 of preparing for literature review or meta-analysis; 09:57:11

Page 53

1 correct?

2 A I did not include any in my literature review
3 or meta-analysis. I may have done reading as part of
4 my Master's thesis and doctoral dissertation.

5 I know for a fact, because of the topic of my 09:57:38
6 Master's thesis and doctoral dissertation, I had to
7 read very widely on steroid hormone, biogenesis and
8 actions.

9 Q So we had a discussion about some of this two
10 years ago. Do you think your memory about what -- your 09:57:59
11 readings was more accurate two years ago or more
12 accurate today?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: I would say more accurate today
15 because I have -- since you asked me this two years 09:58:14
16 ago, I've thought about it more to remember, okay, did
17 this happen in Abnormal Psychology, in Sports
18 Psychology, something like that.

19 BY MR. BLOCK:

20 Q Okay. So I just want to be clear about a 09:58:23
21 distinction between conducting reading as in a -- as a
22 class assignment and conducting reading as part of your
23 research process. All right? Does that distinction
24 make sense to you?

25 A Yes. 09:58:41

1 Q Okay. So you've -- you've talked about maybe
2 reading a paper or a chapter as part of a class
3 assignment; correct?

4 A Yes.

5 Q Okay. So in terms of reading as part of your 09:58:52
6 own independent research process, do you have any
7 recollection of doing any reading about transgender
8 people as part of your own independent research process
9 while obtaining your degrees?

10 A I don't have a specific recollection of doing 09:59:09
11 that independently while reading my -- while performing
12 my Master's and doctoral research, but, again, I might
13 have.

14 Q Okay. So since receiving your doctorate until
15 the time when you first reached out to ADF, have you -- 09:59:28
16 had you ever conducted any research concerning
17 transgender people?

18 A Once again, please clarify what you mean by
19 "research."

20 Q All right. Well, let's do primary research. 09:59:42

21 A No, I had not done primary research of
22 transgender individuals.

23 Q Had you ever conducted any literature review
24 regarding transgender people?

25 A I have not formally written a literature 09:59:56

1 review.

2 Q Had you ever written a meta-analysis about
3 transgender people?

4 A No, I had not performed a meta-analysis
5 regarding transgender individuals. 10:00:07

6 Q Okay. So what other professional research
7 might you have done regarding transgender people?

8 A Trying to keep up with the legislation in
9 sports regarding the participation of transgender
10 individuals and then on seeing the legislation, out of 10:00:25
11 my own curiosity, looking to see what research was
12 informing that legislation.

13 Q Okay. In terms of original research that
14 you've done, have any of the subjects in your original
15 research been transgender, to the best of your 10:00:41
16 knowledge?

17 A To the best of my knowledge, none of any
18 subjects have been transgender.

19 Q Okay. Have you worked with transgender people
20 in any capacity? 10:00:52

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: I -- I think there are
23 individuals at the university that are transgender that
24 I have worked with on committees or other things.

25 ///

1 BY MR. BLOCK:

2 Q Okay. How many transgender people do you
3 think you've met?

4 MR. FRAMPTON: Same objection.

5 THE WITNESS: I can think of two by name and 10:01:22
6 others that I've met, but -- I've met a lot of people,
7 and so to try and come up with a number that were
8 transgender is going to be very, very difficult.

9 BY MR. BLOCK:

10 Q Have you ever appeared on any podcasts? 10:01:41

11 A Yes.

12 Q Which ones?

13 A I probably can't name all of them.

14 Q Okay.

15 A I can do my best. 10:01:55

16 Q Great.

17 A So there was a podcast Muscle for Life with --
18 with Mike Matthews, I think. I was on the Megyn Kelly
19 podcast. I was on Munk Debates podcast. I was on
20 Governor Ricketts' podcast. There's another one out 10:02:18
21 there that I remember the podcast. I don't remember
22 the name of it.

23 Q Do you remember approximately when the
24 Megyn Kelly podcast was?

25 A A little less than a year ago, if I remember 10:02:39

Page 57

1 right.

2 Q And what was the topic of that podcast?

3 A That was regarding the participation of
4 biological males in female sports.

5 Q And what was the Munk Debates podcast? 10:02:51

6 A That was also about biological males
7 participating in female -- in women's sports.

8 Q And when -- when was that podcast?

9 A Last summer, maybe late last summer.

10 Q Okay. And when you refer to biological males 10:03:12
11 in these podcasts, did you discuss at all people with
12 DSDs?

13 A If we did, it was not a major topic of
14 discussion.

15 Q Okay. So your -- your podcast with 10:03:24
16 Governor Ricketts, that's on his show "The Nebraska
17 Way"; is that -- is that correct?

18 A That is correct.

19 Q Okay. And you appeared on September 1st,
20 2021? 10:03:42

21 A I will trust you on the date on that. I don't
22 remember myself.

23 Q All right. Does that sound around the time?

24 A That sounds like the right time period.

25 MR. BLOCK: Okay. Great. 10:03:53

1 So I'm going to introduce an exhibit marked 68
2 and if you can open it up.

3 The concierge -- it's an -- it's a video clip,
4 and the concierge is going to have to play it for us.

5 But let me know what appears on -- on your 10:04:18
6 screen before -- before I ask the concierge to -- to
7 play it.

8 Do you see a file?

9 (Exhibit 68 was marked for identification
10 by the court reporter and is attached hereto.) 10:04:28

11 THE WITNESS: I see Exhibit 068 - Clip, space,
12 2005.

13 BY MR. BLOCK:

14 Q Okay. I'm going to have -- I'm going to ask
15 the concierge to play the clip now. And it's -- it's a 10:04:37
16 little bit over a minute long. I didn't want to -- you
17 to think that I've cut anything off here. And then
18 after the clip plays, I'll ask you a few questions
19 about it.

20 Does that sound okay? 10:04:50

21 A Will the clip show up in the -- in this Zoom
22 meeting, or is it going to be a different window?

23 Q It's going to show up as a screen share --

24 A Okay.

25 Q -- right now. 10:05:05

1 Can you see the screen share?

2 A Yes.

3 Q Great.

4 (Video clip played.)

5 MR. BLOCK: Thank you to the concierge. 10:06:32

6 BY MR. BLOCK:

7 Q Does -- does this video clip appear to be an
8 accurate excerpt of your interview with
9 Governor Ricketts?

10 A Yes, that's me. 10:06:41

11 Q Okay. Do you still agree with everything you
12 said in that video clip?

13 MR. FRAMPTON: Objection; form and scope.

14 MR. TRYON: Objection; scope.

15 BY MR. BLOCK: 10:06:50

16 Q You can answer.

17 A Can you repeat your question, please?

18 Q Do you still agree with everything you said in
19 that video clip?

20 A Yes, I do. 10:06:58

21 Q Okay. You're not a mental health expert;
22 right?

23 A That is correct.

24 Q You don't have any education or training
25 that -- that would provide a basis for you to offer an 10:07:10

Page 60

1 expert opinion on the proper healthcare for transgender
2 youth, do you?

3 MR. FRAMPTON: Objection; form and scope.

4 Go ahead.

5 THE WITNESS: No, I would not be called upon 10:07:19
6 to offer treatment for transgender individuals.

7 BY MR. BLOCK:

8 Q But my question is, to offer an expert opinion
9 on treatment for transgender individuals, you don't
10 have any, you know, credentials that would allow you to 10:07:34
11 provide an expert opinion on that topic, do you?

12 MR. FRAMPTON: Same objection.

13 Go ahead.

14 THE WITNESS: I have not been asked to offer
15 an expert opinion on the psychological or psychiatric 10:07:44
16 care of transgender individuals.

17 BY MR. BLOCK:

18 Q But my question is, do you have the
19 credentials and training that would allow you to offer
20 such an opinion, if you were asked? 10:07:52

21 MR. FRAMPTON: Same objection.

22 THE WITNESS: No, I do not have those
23 credentials or degrees.

24 BY MR. BLOCK:

25 Q Okay. In this clip, you used the word 10:08:07

Page 61

1 "transgenderism"; right?

2 A That is correct.

3 Q Is that a medical term?

4 MR. FRAMPTON: Objection; form and scope.

5 THE WITNESS: I'm not sure what you mean, is 10:08:19
6 it a medical term?

7 BY MR. BLOCK:

8 Q What does transgenderism mean?

9 A An individual who is transgender.

10 Q Okay. In any of the -- the scholarly articles 10:08:28
11 that you've read about transgender people, have any of
12 them used the term "transgenderism"?

13 A I cannot recall, to answer that question, if
14 they have or have not.

15 Q Okay. In the clip, you mentioned Ben Shapiro; 10:08:45
16 correct?

17 A That is correct.

18 Q Who is Ben Shapiro?

19 A Ben Shapiro is an individual that does a lot
20 of podcasts, news clips, news interviews, speaking at 10:09:00
21 organizations on social and political matters.

22 Q Do you -- do you think he's a reliable source
23 of authority on mental healthcare for transgender
24 youth?

25 MR. FRAMPTON: Objection; form and scope. 10:09:19

Page 62

1 THE WITNESS: In the role that he is filling,
2 I think Ben Shapiro is able to provide reliable
3 information on what has been written in these matters.

4 BY MR. BLOCK:

5 Q Okay. And reliable enough that you -- you 10:09:32
6 thought it was worth repeating to the audience of the
7 podcast; correct?

8 MR. FRAMPTON: Same objections.

9 THE WITNESS: That is correct.

10 BY MR. BLOCK: 10:09:49

11 Q Okay. In what context have you heard his
12 opinions about transgender youth?

13 A Do you mean context or format?

14 Q Let's start with format.

15 A So in a number of videos and radio clips and 10:10:02
16 seeing on the news, I have seen Ben Shapiro make
17 statements regarding transgender individuals.

18 Q And has that affected your own opinion on
19 these issues?

20 MR. FRAMPTON: Objection; form and scope. 10:10:21

21 THE WITNESS: No, I don't think what he has
22 said has affected my opinion.

23 BY MR. BLOCK:

24 Q Has it affected your opinion on mental
25 healthcare for transgender youth? 10:10:37

Page 63

1 MR. FRAMPTON: Same objection.

2 THE WITNESS: I don't think it has affected my
3 opinion on healthcare for transgender youth.

4 BY MR. BLOCK:

5 Q Okay. Is new toy syndrome a medical term? 10:10:47

6 MR. FRAMPTON: Same objections.

7 THE WITNESS: No.

8 BY MR. BLOCK:

9 Q Okay. Do you think that receiving
10 gender-affirming care is analogous to playing with a 10:10:56
11 new toy?

12 MR. FRAMPTON: Objection; form and scope.

13 THE WITNESS: I'm sorry, can you state the --
14 restate the question?

15 BY MR. BLOCK: 10:11:13

16 Q Yeah. Do you -- do you think transgender
17 youth receiving gender-affirming care is analogous to a
18 person playing with a new toy?

19 MR. FRAMPTON: Same objections.

20 THE WITNESS: In the context that I quoted 10:11:22
21 Ben Shapiro, in that interview, it is a good analogy.

22 BY MR. BLOCK:

23 Q How is it a good analogy?

24 A As I explained in that, also as it was
25 explained by Ben Shapiro, when people get a new toy, 10:11:37

Page 64

1 they're often very happy with it, and then the newness
2 wears off. That is drawn as an analogy to what has
3 been demonstrated in scholarly literature about
4 transgender individuals.

5 Q What scholarly literature? 10:11:53

6 MR. FRAMPTON: Objection; form and scope.

7 THE WITNESS: The research is cited on the
8 SEGM web page.

9 BY MR. BLOCK:

10 Q What's SEGM? 10:12:05

11 A I may not be able to tell you precisely, but
12 it is something like Society for Evidence-Based Gender
13 Medicine.

14 Q And why have you been reading the SEGM web
15 page? 10:12:25

16 MR. FRAMPTON: Objection; form and scope.

17 THE WITNESS: It is a good place to find
18 information about transgender individuals to help make
19 sure that I am staying current on the information in
20 this area. 10:12:34

21 BY MR. BLOCK:

22 Q How is information about the mental healthcare
23 of transgender individuals relevant to you in your
24 work?

25 MR. FRAMPTON: Same objections. 10:12:48

Page 65

1 THE WITNESS: The mental healthcare is often
2 associated with the use of either puberty blockers,
3 testosterone suppression, estrogen administration,
4 which then has physiological effects.

5 BY MR. BLOCK: 10:13:06

6 Q So -- so you read about -- well, I -- I guess,
7 could you explain further? How -- how is utility of
8 the mental healthcare relevant to your opinion about
9 physiological issues and athletic advantages?

10 MR. FRAMPTON: Same objection, form and scope. 10:13:27

11 THE WITNESS: If an individual is being given
12 a physiologically active medicine, such as a puberty
13 blocker, such as testosterone suppression or
14 administration of estrogen, that will affect their
15 physiology, which then may or may not have an affect on 10:13:47
16 their ability to compete in athletics.

17 So it is important to know what is being done.

18 BY MR. BLOCK:

19 Q Does -- does the mental health impacts of
20 those treatments matter in terms of the physiological 10:14:04
21 effects?

22 A If the mental health treatment includes the
23 administration of physiological substances, then it
24 affects physiological responses.

25 Q Yeah, so, I guess, that's not really answering 10:14:25

Page 66

1 my question.

2 So you -- you -- you talked about how, in your
3 opinion, the positive mental effects of
4 gender-affirming care for some people would -- are like
5 a new toy, that they have a positive effect and then 10:14:39
6 that positive mental health effect wears off, and my
7 question is whether the -- the fact that you alleged
8 that positive mental health effect would wear off has
9 any implication for the physiological results of having
10 taken that medication. 10:15:04

11 Does that make sense?

12 MR. TRYON: Objection --

13 MR. FRAMPTON: Objection; form.

14 MR. TRYON: -- form.

15 THE WITNESS: I would ask you to try and break 10:15:11
16 that question down a little more.

17 BY MR. BLOCK:

18 Q Sure.

19 A I'm not sure where you're going.

20 Q Sure. So the -- if -- if -- assuming that -- 10:15:17
21 taking it as an assumption, that puberty blockers and
22 gender-affirming hormones had no positive health
23 effects for mental health, how would that assumption
24 impact your opinion on the physiological effects of
25 taking those medications? 10:15:43

Page 67

1 MR. FRAMPTON: Objection; form and scope.

2 Go ahead.

3 THE WITNESS: Well, puberty blockers and
4 testosterone suppression and estrogen administration
5 are physiological active substances. What they do for 10:15:57
6 mental health compared to what they do for athletic
7 performance and physiological responses might be
8 separate issues.

9 BY MR. BLOCK:

10 Q Okay. So if they're separate issues, why do 10:16:08
11 you read about the mental health effects of taking
12 those medications?

13 MR. FRAMPTON: Same objections.

14 THE WITNESS: I think I previously answered
15 this question, to know what are the treatments that are 10:16:27
16 being used that could then affect physiological
17 responses to exercise.

18 BY MR. BLOCK:

19 Q Okay. So what other sources of information do
20 you consult on the -- the mental health effects of 10:16:39
21 puberty blockers and gender-affirming hormones?

22 MR. FRAMPTON: Objection; scope.

23 THE WITNESS: So I will find scholarly
24 articles and read those to find information. A lot of
25 the information, if I find it on a web page, I will 10:17:01

Page 68

1 look to see if it is to a scholarly journal, scholarly
2 article that's reputable, but then I can verify that
3 the information on the web page is valid, at least
4 based on what has been presented in scholarly
5 literature. Of course, you see things in the news as 10:17:18
6 well; right?

7 BY MR. BLOCK:

8 Q Is there any scholarly article that -- that
9 likens gender-affirming care to a new toy?

10 MR. FRAMPTON: Objection; form and scope. 10:17:32

11 THE WITNESS: I could not say.

12 BY MR. BLOCK:

13 Q Okay. What scholarly articles, sitting here
14 today, can -- can you think of having read on the topic
15 of mental healthcare for transgender youth? 10:17:46

16 MR. FRAMPTON: Same objection; form and scope.

17 THE WITNESS: So there was a review on the
18 effects of puberty blockers that was put out by Sweden,
19 Karolinski Institute, and so I read that article and
20 looked up a number of the articles that were referenced 10:18:11
21 in there. Similar type of thing came out of
22 Great Britain, their national health organization,
23 something like that. And so I looked at a lot of those
24 articles.

25 I -- I have also, again, coming across some on 10:18:24

1 PubMed or Google Scholar. I've seen other articles
2 looking at the effects of hormone treatment in
3 transgender individuals and measures of mental health.

4 BY MR. BLOCK:

5 Q And can you remember any of the articles on 10:18:39
6 PubMed or Google Scholar?

7 A I cannot remember them by author or title.

8 Q Okay. Have you read the Endocrine Society
9 guidelines on providing gender-affirming care to
10 transgender people? 10:18:58

11 A I --

12 MR. FRAMPTON: Objection; scope.

13 Go ahead.

14 THE WITNESS: I have read the information on
15 the web page. I have read the article. I cannot 10:19:04
16 remember which journal it's published in.

17 BY MR. BLOCK:

18 Q Well, I'm sorry, what -- what -- what are you
19 referring to when you say a web page and an article?

20 A So the Endocrine Society has a web page 10:19:22
21 regarding the administration of puberty blockers and
22 estrogen -- or testosterone suppression, estrogen
23 administration for -- for transgender individuals. And
24 so I have read through that web page, and there is an
25 article associated with the information on that web 10:19:42

Page 70

1 page that was published in a scholarly journal.

2 Q Okay. And -- and that -- that would be the --
3 the -- the 2017 guidelines for care of people with
4 gender dysphoria and gender incongruence?

5 A That is my recollection, yes. 10:19:57

6 Q When did you read that?

7 A Sometime in the past year.

8 Q So at the time of our past deposition, you
9 hadn't read that yet; is that correct?

10 A As I recall, that is correct. 10:20:14

11 Q Okay. But -- but since then, you have read
12 it?

13 A Yes. You seem to make a strong suggestion
14 that I should read that.

15 Q Okay. Did you learn anything from reading it? 10:20:26

16 A Yes, I did.

17 Q What did you learn?

18 A I learned that the recommendations of the
19 Endocrine Society for testosterone suppression result
20 in much, much lower testosterone concentration than 10:20:39
21 those recommended by world -- or, sorry, by world sport
22 or by the Olympics.

23 Q Great. Just to close the loop, can you think
24 of any other source of information or political
25 commentator you've heard and talk about transgender 10:21:05

Page 71

1 youth who you think provides a good description of the
2 science?

3 MR. FRAMPTON: Objection; form and scope.

4 THE WITNESS: So I've cited a number of papers
5 in my article -- or, sorry, in my expert declaration. 10:21:25
6 So I've read those articles of scholars.

7 As far -- as far as political commentary, it's
8 all over the place these days, so it's hard to identify
9 who has or has not opined on that.

10 Q All right. Do you -- I'm going to turn to a 10:21:42
11 new line of questions. Do you need a break before
12 then?

13 A Yeah, let's take five.

14 Q Okay. Great.

15 THE VIDEOGRAPHER: We are off the record at 10:21:59
16 10:22 a.m.

17 (Recess.)

18 THE VIDEOGRAPHER: We are on the record at
19 10:29 a.m.

20 MR. BLOCK: Great. 10:29:11

21 BY MR. BLOCK:

22 Q I want to go back in time and ask you about
23 the time that you first reached out to ADF on this
24 issue of the participation of transgender athletes.

25 Do you remember who you contacted at ADF? 10:29:30

Page 72

1 A I do not remember who I contacted.

2 Q And do you remember why you knew that ADF was
3 the organization to contact?

4 A I saw a news clip or information online about
5 the Soule versus CIAC case, and it identified Alliance 10:29:57
6 Defending Freedom as representing Selina Soule.

7 Q Okay. And, you know, at the time you first
8 contacted ADF, had you done any research on the -- the
9 effects of puberty blockers or gender-affirming
10 hormones on transgender people? 10:30:19

11 A Once again, what do you mean by "research"?

12 Q Have you -- had you read anything on the -- on
13 the physiological effects of gender-affirming care at
14 the time you first reached out to ADF?

15 A Yes, I had. 10:30:39

16 Q What had you read?

17 A I had read some articles on the effects of
18 gender-affirming hormone therapy, to use your
19 terminology on that, on various physiological factors,
20 such as muscle size or strength or muscle mass, those 10:30:55
21 types of things.

22 Q You -- you had already read that research
23 before you reached out to ADF?

24 A I had read some.

25 Q Okay. And had you read that research before 10:31:10

1 you saw the news item about the transgender runners in
2 Connecticut?

3 A Yes.

4 Q Okay. So -- so you -- you had previously had
5 occasion to read research on the effects of 10:31:26
6 gender-affirming hormones on muscle mass, and then you
7 saw the news clip about the runners in Connecticut, and
8 then you contacted ADF? That's the chronology of how
9 it went?

10 MR. FRAMPTON: Objection; form. 10:31:39

11 THE WITNESS: Yes, that sounds like a correct
12 timeline.

13 BY MR. BLOCK:

14 Q Okay. And what -- what would have prompted
15 you to -- to do any research specifically on the 10:31:48
16 effects of gender-affirming hormones before seeing the
17 news item about transgender people in Connecticut?

18 A As I had mentioned previously, staying up to
19 date on what the laws are or the rules, I guess would
20 be a more appropriate way to say it, regarding the 10:32:10
21 participation of transgender women in women's sports or
22 trans women in women's sports. Student questions,
23 asking about that. Particularly after 2019, when
24 Cecé Telfer won the 400-meter hurdles in Division II,
25 because I had some students that were there and had 10:32:35

1 questions.

2 Q What do you mean, that were there?

3 A I have students that are student athletes that
4 compete in Division II women's track and field and were
5 at that national championship where Cecé Telfer won the 10:32:53
6 400-meter hurdles.

7 Q And were those students upset that Cecé Telfer
8 had won?

9 MR. FRAMPTON: Form.

10 THE WITNESS: The students had questions and 10:33:05
11 many of them stated questions such as how can that be
12 fair.

13 BY MR. BLOCK:

14 Q So were they upset?

15 MR. FRAMPTON: Same objection. 10:33:20

16 THE WITNESS: I guess I would need more
17 clarification on "upset."

18 BY MR. BLOCK:

19 Q So they didn't think it was fair?

20 A That would be correct. 10:33:32

21 Q And so in response to those student questions,
22 you -- you started doing research; is that right?

23 A I had been looking it prior to the student
24 questions, but in response to the student questions, I
25 suppose you could say I tried to dig deeper. 10:33:52

Page 75

1 Q Okay. So what -- what -- how had you been
2 looking into it before the student questions?

3 A Before the student questions, I would look at
4 the policies as put out by the NCAA, put out by the
5 N -- IOC and tried to look at research that informed 10:34:08
6 those policies by searching Google Scholar, PubMed,
7 reading news articles about it and see if they had
8 links or information on research.

9 Q And what about Cecé's participation did the
10 students think were unfair? 10:34:26

11 A Cecé is a biological male and was competing in
12 women's sports.

13 Q And why did they think that was unfair?

14 A They thought it was unfair for a biological
15 male to compete in women's sports. 10:34:43

16 Q And when you say you did earlier research on
17 NCAA policy and the IOC, you know, what had prompted
18 you to do that research?

19 A It's an important topic in sports, in my
20 field. It's possible that the textbook I was using at 10:35:03
21 the time had a statement on it.

22 Q Had you done any research on the participation
23 of Caster Semenya in the IOC?

24 A I have read some news articles on
25 Caster Semenya and probably heard some things on 10:35:20

1 podcasts about Caster Semenya.

2 Q Okay. But you didn't do any research about
3 that?

4 A I -- again, more than news articles, I cannot
5 recall a specific article that said this was 10:35:37
6 Caster Semenya's medical condition in the scholarly
7 literature.

8 Q Okay. But you were more interested in doing
9 research on transgender athletes than on athletes like
10 Caster Semenya; is that fair? 10:35:54

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: That would be fair to say.

13 BY MR. BLOCK:

14 Q Okay. And why is that?

15 A We are dealing with separate issues. 10:36:06
16 Disorders of sexual development are not the same as a
17 transgender individual.

18 Q And so why were you more interested in the
19 participation -- researching the participation of
20 transgender individuals as opposed to individuals with 10:36:20
21 DSDs?

22 MR. FRAMPTON: Same objection.

23 THE WITNESS: The policies seem to, if I
24 recall, state "transgender individuals." The student
25 questions were about transgender individuals. The 10:36:35

Page 77

1 stuff I was seeing in the news was about transgender
2 individuals.

3 BY MR. BLOCK:

4 Q When did the topic of the participation of
5 transgender individuals in -- in sports first come to 10:36:45
6 your attention?

7 A That would be very challenging to say, but I
8 would say sometime after 2004.

9 Q Why sometime after 2004?

10 A That seems to be the first IOC policy I 10:37:04
11 remember that addressed transgender individuals.

12 Q And when did a transgender individual first
13 participate in the Olympics?

14 A I don't know.

15 Q You have no idea? 10:37:23

16 A No.

17 Q Do you know if it was, like, before 2010?

18 A I don't know.

19 Q Okay. You have no -- do you have any
20 knowledge or recollection of any transgender people 10:37:45
21 participating in the Olympics?

22 A Would you consider the participation of
23 Bruce Jenner to be a transgender individual
24 participating in the Olympics?

25 Q About a -- a -- a transgender person competing 10:38:01

Page 78

1 post transition.

2 A So I do know of someone that has done that.

3 Q Who?

4 A Laurel Hubbard.

5 Q Okay. Anyone before her? 10:38:19

6 A I cannot recall anyone before that.

7 Q Okay. When did you first -- when did you
8 first become -- well, let me -- I'll -- I'll -- I'll
9 come back to that.

10 When -- when is the first time a transgender 10:38:42
11 person -- a transgender woman competed in women's
12 tennis events?

13 A I -- I don't know.

14 Q You -- you have no idea?

15 A There's something I seem to recall of a 10:39:05
16 situation that was in the '70s or '80s, but I can't
17 recall off the top of my head more specifics.

18 Q Does the name Renée Richards refresh your
19 recollection about it?

20 A So as you mention that, yes, the name 10:39:24
21 Renée Richards playing tennis -- again, I couldn't, at
22 this point in time, put it in a timeframe other than I
23 think it was probably before I was even in college.

24 Q Okay. And when did you first become aware
25 that that had happened? 10:39:40

1 A Sometime in the past 15 or so years. In my
2 readings, I remember seeing something about
3 Renée Richards.

4 Q Okay. And did the readings -- what did the
5 readings say about her? 10:39:55

6 A I can't recall at this point in time.

7 Q Okay. And did you have any feelings about
8 whether it was fair for her to be participating in
9 women's tennis in the '70s?

10 MR. FRAMPTON: Objection; form and scope. 10:40:06

11 Go ahead.

12 THE WITNESS: I -- I would, once again, go
13 back to my statement that if Renée Richards was a
14 biological male, then biological males have advantages
15 over biological females in sports. 10:40:23

16 BY MR. BLOCK:

17 Q Yeah, but I'm just -- I'm asking about, sir,
18 when you formed an opinion about -- about
19 Renée Richards, if you do -- if you did form an opinion
20 about Renée Richards, like when you -- when you first 10:40:35
21 heard about it, did you have an opinion about it being
22 fair or unfair?

23 MR. FRAMPTON: Same objection.

24 MR. TRYON: Objection.

25 THE WITNESS: So I -- I think I answered that 10:40:46

Page 80

1 when I stated that biological males should not be
2 competing in women's sports.

3 BY MR. BLOCK:

4 Q Okay. So -- but you had that opinion the
5 first time you heard about Renée Richards; right? 10:40:58

6 MR. FRAMPTON: Same objections.

7 THE WITNESS: Again, where I can't put in a
8 specific timeframe when I first heard about
9 Renée Richards, I can't say if Renée Richards
10 influenced my opinion one way or another or what my 10:41:15
11 opinion was before reading that article.

12 BY MR. BLOCK:

13 Q So did you have an opinion about the
14 participation of transgender athletes in women's sports
15 before you did further research on the topic? 10:41:32

16 MR. FRAMPTON: Objection; form and scope.

17 THE WITNESS: Well, as long as I can recall,
18 sports has been separated. So you have sports for men,
19 meaning biological men, and sports for women, meaning
20 biological women, and that separation has been there. 10:41:51
21 Again, as long as I can recall, my knowledge of anatomy
22 and physiology, since I have been involved in study of
23 anatomy and physiology as a student, indicates there
24 are differences.

25 ///

1 BY MR. BLOCK:

2 Q Okay. And so -- so that was your -- that was
3 your sort of baseline assumption before you conducted
4 research, that -- that it would be unfair to allow a
5 transgender woman to participate in women's sports? 10:42:16

6 MR. FRAMPTON: Objection --

7 MR. TRYON: Objection.

8 MR. FRAMPTON: -- form.

9 THE WITNESS: I think it would be fair to say
10 that based on the experience that sports have been 10:42:26
11 separated by sex and knowing of the differences between
12 biological males and biological females, there's a --
13 they should be separated on sex.

14 BY MR. BLOCK:

15 Q All right. Just going to -- going on to a -- 10:42:47
16 a new topic now.

17 In your report, you say that even before
18 puberty, prepubertal boys outperform prepuberto --
19 prepubertal girls in athletic competition; right?

20 A Yes, I state that in my report. 10:43:08

21 Q Okay. And you -- and you attribute those
22 differences in performances to biological factors
23 instead of social ones?

24 MR. FRAMPTON: Objection; form.

25 You can -- 10:43:17

1 THE WITNESS: Yes, biological factors are the
2 primary reason that boys outperform girls in athletic
3 events.

4 BY MR. BLOCK:

5 Q Yeah, so -- but for prepubertal boys and 10:43:29
6 prepubertal girls, you attribute their difference in
7 performance to biological factors?

8 A That is correct.

9 Q Okay. What biological factors provide an
10 advantage to prepubertal boys over prepubertal girls? 10:43:48

11 A Boys have more lean body mass, which includes
12 more lean muscle mass, than girls. There are perhaps
13 other factors that contribute to that more lean body
14 mass and more muscle mass.

15 Q What does that -- what does that mean, there 10:44:09
16 other factors that contribute to the more lean body
17 mass and lean muscle mass?

18 A Well, having a Y chromosome compared to being
19 XX chromosome, there are a multitude of genes in
20 muscles that respond to the Y chromosome differently 10:44:30
21 than they do to X chromosomes.

22 Q And is there any research on how they respond
23 before puberty?

24 A The research is focused on the fact that there
25 is a difference in lean body mass before puberty. 10:44:50

Page 83

1 Q Okay. So besides --

2 A To the best of my knowledge.

3 Q Sorry, I didn't mean to cut you off.

4 Besides lean body mass and lean muscle mass,
5 are there any other physiological differences connected 10:45:01
6 to athletic performance between boys and girls --

7 MR. FRAMPTON: Same objection.

8 BY MR. BLOCK:

9 Q -- before puberty?

10 A Yes. There are differences in overall growth 10:45:12
11 between boys and girls, as evidenced by the CDC and the
12 World Health Organization having separate growth charts
13 for both male and female fetuses and for boys and
14 girls.

15 Q But -- but in terms of physiological 10:45:25
16 characteristics associated with athletic performance,
17 what other physiological differences besides 10 percent
18 difference in lean body mass and lean muscle mass?

19 MR. FRAMPTON: Objection; form:

20 THE WITNESS: I would say -- that is the one 10:45:43
21 that we will focus on because that is the one that has
22 been fairly well demonstrated. There has to be
23 something else that contributes that lean body mass
24 biologically.

25 ///

1 BY MR. BLOCK:

2 Q Okay. Do you -- but you can't think of any
3 other measurable factor besides lean body mass that is
4 tied to athletic performance advantages for prepubertal
5 boys over prepubertal girls; right? 10:46:21

6 MR. FRAMPTON: Objection; form.

7 Go ahead.

8 THE WITNESS: Well, the paper by Eiberg that's
9 cited in my report demonstrated differences in VO2 max,
10 even when controlled for lean body mass, it seemed like 10:46:33
11 the boys' VO2 max was higher.

12 BY MR. BLOCK:

13 Q Okay. Did the McManis article also confirm
14 those findings?

15 A I would need to look at the McManis article to 10:46:46
16 refer. I cannot remember if McManis -- it was written
17 after Eiberg, I think, but I cannot remember if they
18 cite Eiberg.

19 Q Okay. Well, we might -- we might come back to
20 that. 10:47:33

21 The difference in lean body mass and lean
22 muscle mass that you refer to in your report is a
23 10 percent difference?

24 MR. FRAMPTON: Objection; form.

25 Go ahead. 10:47:40

Page 85

1 THE WITNESS: The 10 percent number is stated
2 in the article by McManis.

3 BY MR. BLOCK:

4 Q Do you have any other knowledge of the
5 difference besides 10 percent? 10:47:49

6 A I cite several articles demonstrating
7 difference in body composition in children prepuberty.
8 I would need to look at those articles to either
9 calculate the difference myself or see if they specify
10 the difference. 10:48:05

11 Q But in your report, you -- you quoted the
12 10 percent figure; correct?

13 A That is correct.

14 Q Okay. If you could turn to your report, which
15 I believe is -- is Exhibit 46 -- 64. I got that 10:48:24
16 flipped.

17 A All right.

18 Q Thank you. I'm going to point you to a
19 specific paragraph in a second.

20 Paragraph 42 on page 17. 10:49:27

21 A Sorry, the page numbering on the document is
22 different than the page number that Acrobat --

23 Q No.

24 A -- is taking me to, so it will take me a
25 second, sorry. 10:49:59

Page 86

1 Q Sure thing.

2 A All right. Paragraph 42.

3 Q You say (as read):

4 "No -- No single physiological

5 characteristic alone accounts for all 10:50:05

6 or any one of the measured advantages

7 that men enjoy in athletic

8 performance."

9 Do you see that?

10 A Yes, I do. 10:50:13

11 Q Okay. So does a difference in lean body mass

12 account for all or any one of the measured advantages

13 that men enjoy in athletic performance?

14 A Lean body mass is a major factor that provides

15 men -- males with athletic advantages over females. 10:50:34

16 Q Does it -- does it alone account for all or

17 any one of the measured advantages that men enjoy in

18 athletic performance?

19 MR. FRAMPTON: Objection; form.

20 THE WITNESS: I think I've answered your 10:50:57

21 question by stating it's a major factor, but not the

22 only factor.

23 BY MR. BLOCK:

24 Q Is -- are there any studies about the -- a

25 difference -- about the effect of a 10 percent 10:51:04

Page 87

1 difference in lean body mass on athletic performance?

2 A I'm going to say yes, I'm sure there's studies
3 that are correlating lean body mass with performance.

4 Q But my question is a 10 percent difference in
5 lean body mass. 10:51:26

6 MR. FRAMPTON: Objection; form.

7 THE WITNESS: Again, there are -- I -- I will
8 say there are studies that are correlating percent lean
9 body mass with athletic performance in all sorts of
10 different events, and so that would include a 10:51:42
11 10 percent difference, along with other differences,
12 probably.

13 BY MR. BLOCK:

14 Q You -- you don't cite anything in your report
15 that purports to study the effect of a -- a 10 percent 10:51:51
16 difference in lean body mass in athletic performance,
17 do you?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: Can you clarify what you're
20 trying to ask me there? 10:52:05

21 BY MR. BLOCK:

22 Q In your report, do you cite any studies
23 reflecting what affect a difference in -- I'll say that
24 again, sorry.

25 Do you, in your report, cite any studies 10:52:21

1 measuring the effect of a 10 percent difference in lean
2 body mass on athletic performance?

3 MR. FRAMPTON: Objection; form.

4 THE WITNESS: I don't recall citing any
5 studies that specifically identify how much a 10:52:35
6 10 percent advantage enhances performance.

7 BY MR. BLOCK:

8 Q Okay. Thank you.

9 Are you aware of any study proving that
10 differences in athletic performance between prepubertal 10:53:01
11 boys and girls are caused by biological factors and not
12 social ones?

13 MR. FRAMPTON: Objection; form.

14 THE WITNESS: From a scientific standpoint,
15 science does not prove. 10:53:19

16 BY MR. BLOCK:

17 Q Science does not prove what?

18 A Science doesn't prove anything from a
19 scientific standpoint.

20 Q Well, do you have -- are there any articles 10:53:31
21 that purport to exclude social factors as a cause of
22 difference in performance between prepubertal boys and
23 prepubertal girls?

24 A Yes. Eiberg.

25 Q How does that purport to exclude social 10:53:47

1 factors?

2 A So Eiberg measured six- to seven-year-old boys
3 and girls, very objectively measured physical activity
4 in those children, measured very objectively VO2 max in
5 those children and body composition in those children 10:54:09
6 and found that even for the children of the same amount
7 of physical activity, boys have higher fitness.

8 Q And what -- what do you mean, even for
9 children of the same physical activity?

10 A So boys and girls that engage in the same 10:54:24
11 amount of physical activity -- running, jumping,
12 whatever constitutes physical activity -- the boys had
13 higher fitness.

14 Q So -- but does this mean physical activity in
15 terms of what was measured, like for a particular 10:54:40
16 event, or -- or physical activity in all aspects of
17 their life?

18 A This was physical activity as measured by an
19 accelerometer which measures the quantity and intensity
20 of physical activity during the time period the 10:54:54
21 accelerometer is worn.

22 Q Okay. So can you just explain to me how that
23 can give you information about, you know, whether these
24 boys and girls, as a general matter, like, were equally
25 physically active, like, outside of the laboratory? 10:55:16

Page 90

1 A Sure. So an accelerometer is a small device
2 that is typically worn on your belt, usually on your
3 right hip, aligned over your knee, and then that
4 accelerometer, because of the scientific engineering --
5 okay, I'll call it voodoo magic, but that's not really 10:55:37
6 the right way to say it. The way the accelerator
7 works, it measures the movement of the body, and then
8 it quantifies that movement as far as intensity.

9 And then after your study period, you have the
10 person wear the accelerometer for the period of time 10:55:54
11 you want, typically free living, you put it on the
12 children and ask them to wear it for a week or two
13 weeks or however long, then you come back, you connect
14 the accelerometer to the computer, it downloads the
15 information from the accelerometer, gives you what are 10:56:07
16 known as counts. And again, you can quantify those
17 counts as sedentary, light, moderate or vigorous
18 intensity physical activity.

19 So between the two, you get an amount of
20 physical activity, an intensity of physical activity 10:56:22
21 for the given time period of study.

22 Q And so what -- what this study found is that
23 people who were similarly -- like, just active during
24 the period in which they were wearing this device, the
25 boys were more physically fit than the girls? 10:56:45

1 A Yes, for boys and girls with the same quantity
2 of physical activity, same intensity, as equal as
3 possible could be measured, the boys were more fit than
4 the girls.

5	Q	And how was fitness measured?	10:57:02
---	---	-------------------------------	----------

6	A	Fitness was measured for body composition and
7		VO2 max.

8 Q Got it. Did the study measure any athletic
9 performances?

10	A This was not a study of competitive athletic	10:57:23
11	performances.	

12 Q Got it. So it just -- it was about body
13 composition, meaning like percentage of fat? Is that
14 what you meant by "body composition"?

15 A That would be a measure of how much of your 10:57:40

16 body is fat, how much of your body is lean body mass.

17 Q Got it. And -- and V02 is the other thing
18 measured?

19 A So VO2 max is maximal aerobic capacity, which
20 accounts for 30 to 40 percent of the performance in 10:57:55
21 endurance-type activities.

22 Q Okay. So if what's being measured is the
23 percentage of lean body mass and we already know
24 that -- that prepubertal boys, on average, would have
25 10 percent more lean body mass than -- than girls, what 10:58:12

1 does the study add to that, in terms of translating
2 that into an athletic advantage?

3 MR. FRAMPTON: Objection; form.

4 THE WITNESS: What the study is doing is
5 quantifying and clarifying the differences between boys 10:58:29
6 and girls that -- well, for the same amount of physical
7 activity, boys have a higher VO2 max than girls.

8 Q Anything else besides the VO2 max?

9 MR. FRAMPTON: Objection; form.

10 THE WITNESS: And again, body composition, 10:58:51
11 which, again, lean body mass is another determinant of
12 potential for athletic performance and performance in
13 sorts.

14 BY MR. BLOCK:

15 Q But -- but that's just confirming something 10:59:02
16 that we already know, that -- that prebortal boys --
17 prepubertal boys have, on average, 10 percent more lean
18 body mass?

19 MR. FRAMPTON: Objection; form.

20 THE WITNESS: If I recall, the study also 10:59:17
21 validated that for the same body composition, the boys
22 had a higher VO2 max. I would need to refer to the
23 study to verify if that was in there.

24 Q Okay. Anything else that -- that you think
25 purports to exclude social causes as a difference in 10:59:41

1 measured athletic performance --

2 MR. HAMPTON: Objection; form.

3 BY MR. BLOCK:

4 Q -- between prepubertal boys and prepubertal

5 girls? 10:59:56

6 MR. FRAMPTON: Sorry, same objection.

7 Go ahead.

8 THE WITNESS: So again, those papers that I

9 cite showing the differences in body composition

10 between prepubertal boys and prepubertal girls because 11:00:03

11 lean body mass is a biological factor.

12 BY MR. BLOCK:

13 Q Right. But besides body composition, I'm

14 talking about athletic performance. And is there

15 anything else that purports exclude social causes for 11:00:17

16 differences in athletic performance as opposed to body

17 composition?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: To the best of my knowledge,

20 there are no studies quantifying the effects of social 11:00:30

21 causes on differences in athletic performance or

22 physiological factors of athletic performance between

23 boys and girls.

24 BY MR. BLOCK:

25 Q In preparation for your report, did you 11:00:41

Page 94

1 conduct original research on the athletic performance
2 of prepubertal boys and prepubertal girls?

3 A I have --

4 MR. FRAMPTON: Objection; form.

5 Go ahead. 11:00:59

6 THE WITNESS: I have downloaded, as stated in
7 my report, data from Athletic.net, looking at the
8 performance of seven-and eight-year-old children, of
9 nine- and ten-year-old children, which are presumed to
10 be prepubertal, and not just the numbers in the report, 11:01:14
11 but other data, I have analyzed it statistically, and
12 the boys outperform the girls in all of the track
13 events that I analyzed.

14 BY MR. BLOCK:

15 Q Have you tried to have your analysis published 11:01:25
16 anywhere?

17 A The analysis is being presented at UNK Student
18 Research Day Thursday of next week. After
19 presentation, the student author and I will probably
20 explore publication opportunities. 11:01:39

21 BY MR. BLOCK:

22 Q All right. But you haven't so far?

23 A No, I have not submitted it for publication
24 yet.

25 Q Okay. You've been writing on this topic in 11:01:46

1 the form of white papers and expert reports for over
2 two years now; right?

3 A That is correct.

4 Q Have you ever attempted to submit any of your
5 analysis for publication? 11:02:02

6 A I have not submitted these papers for
7 publication.

8 Q But your -- have you ever, like, tried to
9 submit your research on this topic in -- in general for
10 publication? 11:02:18

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: So in general, do you mean
13 differences between boys and girls?

14 BY MR. BLOCK:

15 Q I mean on the participation of transgender 11:02:27
16 girls and women.

17 A So as stated in my declaration, I have the
18 Physiology Educator (sic) Community of Practice blog
19 post that I have written, that was reviewed prior to
20 being published on the web, and I have the presentation 11:02:43
21 I made at the American Physiological Society Sex and
22 Gender conference.

23 Q Okay. Anything else?

24 A Those are the only two that I can remember
25 that I have put out for public dissemination. 11:02:58

Page 96

1 Q Okay. And were -- were either of those two
2 examples peer reviewed?

3 A They were both peer reviewed.

4 Q Okay. Have you had -- well, we'll look at --
5 we'll look at those in -- in a minute, but there's no 11:03:16
6 other example of you attempting to submit work on this
7 topic to a peer-reviewed publication?

8 A I have reached out to a journal editor about a
9 possible letter to the editor, but the journal said
10 they don't publish letters to the editor. 11:03:40

11 Q Okay. Why didn't you attempt to have your
12 white paper, you know, published by a peer-reviewed
13 journal?

14 A Well, quite honestly, because Emma Hilton,
15 Tommy Lundberg, Joanna Harper and FIMS have all already 11:03:59
16 published on this and have done a pretty good job
17 reviewing the literature, so I'm not sure that another
18 review of the literature is going to add to the
19 scholarly knowledge.

20 Q What did the letter to the editor that you 11:04:12
21 wanted to write say?

22 A I just asked the editor if they would accept a
23 letter regarding the participation of trans women in
24 women's sports.

25 Q What publications was that? 11:04:27

1 A I cannot remember if it was Medicine & Science
2 in Sports & Exercise or the Journal of Strength and
3 Conditioning Research.

4 Q Okay. And did you say what the letter would
5 opine about? 11:04:43

6 A No.

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: Sorry.

9 I just asked if they would accept a letter on
10 the topic. 11:04:52

11 BY MR. BLOCK:

12 Q Okay. Are you aware of any studies that
13 specifically examine the athletic performance of
14 prepubertal transgender girls?

15 MR. FRAMPTON: Objection; form. 11:05:07

16 THE WITNESS: I am not aware of any studies
17 evaluating the performance of prepubertal biological
18 gir- -- biological boys competing in girls' sports.

19 BY MR. BLOCK:

20 Q Okay. So let's -- we agreed before that if I 11:05:18
21 say the term, you know, "trans girls," you understand
22 what I'm saying; right?

23 A Yes. I just am speaking to make sure I'm
24 clear to myself in what I'm saying.

25 Q Okay. So, you know, I -- I understand that 11:05:31

1 there's physical fitness data on -- on prepubertal boys
2 versus prepubertal girls, and my question is, are you
3 aware of any data that specifically breaks out
4 prepubertal trans girls and reports on their
5 performance? 11:05:53

6 A I am not aware of any data analyzing trans
7 girls.

8 Q Okay. So are you aware of any data comparing
9 the performance of prepubertal trans girls to
10 prepubertal cis girls? 11:06:12

11 A I am not aware of any research on that topic.

12 Q Okay. If you could turn to page -- sorry --
13 paragraph 114 of your report again.

14 A Yes, paragraph 114, page 37.

15 Q Okay. I have to pull it up, too. 11:06:38

16 All right. And it -- it continues from page
17 37 to 38. You say (as read):

18 "While boys exhibit some performance
19 advantages even before puberty, it is
20 both true and" -- 11:06:52

21 Sorry, my -- my PDF -- I'll read this again
22 for the record. I apologize. (As read):

23 "While boys exhibit some performance
24 advantages even before puberty, it is
25 both true and well known to common 11:07:03

1 experience that the male advantage
2 increases rapidly, and becomes much
3 larger, as boys undergo puberty and
4 become men. Empirically, this can be
5 seen by contrasting the modest 11:07:17
6 advantages reviewed immediately above
7 against the large performance
8 advantages enjoyed by men that I have
9 detailed in Section II."

10 Did I read that right? 11:07:26

11 A It sure seemed like you read it word for word.

12 Q All right. Thanks, I did my best.

13 So even though you contend that boys have a
14 performance advantage before puberty, you believe those
15 advantages are modest when compared with the large 11:07:41
16 performance advantages resulting from puberty?

17 MR. FRAMPTON: Objection; form.

18 THE WITNESS: Yes, they are smaller than the
19 advantages that occur after puberty.

20 BY MR. BLOCK: 11:07:55

21 Q Okay. And -- and "modest" was your word;
22 right?

23 A Yes, "modest" was my word.

24 Q Okay. And do you think it's unfair for
25 prepubertal boys and girls in elementary school to -- 11:08:11

Page 100

1 to play on coed or mixed teams?

2 MR. FRAMPTON: Objection; form, scope.

3 THE WITNESS: Before puberty, boys have
4 athletic advantages compared to girls.

5 BY MR. BLOCK: 11:08:29

6 Q Do you think it's unfair for prepubertal boys
7 and girls in elementary school to play on coed or mixed
8 teams?

9 MR. FRAMPTON: Same objections.

10 THE WITNESS: I really haven't been retained 11:08:38
11 as an expert witness to state fair or unfair in this
12 matter as much as to provide the information and allow
13 the policymakers to determine fair versus unfair.

14 BY MR. BLOCK:

15 Q Okay. So you're not, in your expert report, 11:08:50
16 providing an opinion on whether it's fair for trans
17 girls and women to compete on women's sports teams; is
18 that right?

19 MR. FRAMPTON: Objection; form and scope.

20 Go ahead. 11:09:05

21 THE WITNESS: In my expert report, I have done
22 my best to focus on the known biological differences
23 between males and females, how those known biological
24 differences gives male an athletic advantage and how
25 that athletic advantage is not erased by a transgender 11:09:17

Page 101

1 identity or the use of puberty blockers, gender --
2 transgender hormones.

3 BY MR. BLOCK:

4 Q Okay. So you don't provide an expert opinion
5 on whether the goals of fairness, safety and 11:09:30
6 transgender inclusion are reconcilable?

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: If I recall correctly, I think I
9 quote a source or two that state on that or perhaps
10 paraphrase a source or two on what has been stated on 11:09:49
11 that.

12 BY MR. BLOCK:

13 Q Okay. So -- so just to clarify the scope of
14 the opinions you're offering, you are not presenting an
15 expert opinion on whether it is fair or unfair for 11:09:57
16 girls and women who are transgender to participate on
17 girls and women's sports teams; correct?

18 MR. FRAMPTON: Objection; form.

19 THE WITNESS: I have tried to focus on the
20 biological differences and how those differences 11:10:16
21 provide male advantages and how those differences are
22 not erased due to transgender identity or
23 gender-affirming hormone therapy. I have tried to not
24 give an opinion on fair versus unfair.

25 ///

1 BY MR. BLOCK:

2 Q Okay. And, you know, I apologize for being
3 persnickety in the phrasing of the question, but I want
4 to make sure that -- that -- that you're not answering
5 about what you're focusing on. I want to know whether 11:10:45
6 any evidence is going to be submitted in the form of an
7 expert opinion by you regarding fairness of girls and
8 women who are transgender participating in -- in girls
9 and women's sports.

10 So I'm just going to ask it again, and I would 11:11:05
11 just appreciate a "yes" or "no" answer, if you're
12 capable of giving it.

13 Are you providing an expert opinion in this
14 case regarding whether it is fair or unfair for girls
15 and women who are transgender to compete on girls and 11:11:18
16 women's sports teams?

17 MR. FRAMPTON: Objection; form, scope.

18 Go ahead.

19 THE WITNESS: I don't think I can answer that
20 as a yes-or-no question because the information 11:11:30
21 demonstrates that there's an advantage for biological
22 males. And so then we come to a question of fair,
23 which is a very challenging metaphysical question that
24 I would prefer others address.

25 ///

1 BY MR. BLOCK:

2 Q So you -- you are not an expert on whether it
3 is fair or unfair for girls and women who are
4 transgender to participate on girls and women's sports
5 teams?

11:12:01

6 MR. FRAMPTON: Objection; form.

7 THE WITNESS: I'm not a sports philosopher in
8 whom that field would fall into.

9 BY MR. BLOCK:

10 Q Right. Therefore, you are not providing an
11 expert opinion on whether it is fair or unfair for
12 girls and women who are transgender to participate on
13 girls and women's sports teams?

11:12:15

14 MR. FRAMPTON: Same objection.

15 THE WITNESS: As I've said, I've done my best
16 to try and stick to the data and not give my opinion on
17 what is fair or unfair.

11:12:25

18 BY MR. BLOCK:

19 Q I'm sorry, Dr. Brown, this -- this really
20 should be like a -- a simple question. Because when
21 you say "focus" and "I've tried to," that -- that's
22 just not answering my question. I just really need a
23 question (sic) on whether evidence is going to be
24 submitted in this case, from you, in the form of an
25 expert opinion under Federal Rules of Evidence 702 on

11:12:35

11:12:50

Page 104

1 whether or not it is fair or unfair for girls and women
2 who are transgender to participate.

3 Regardless of whether it's your focus,
4 regardless of whether you're trying -- what you're
5 trying or not trying to do, I just need a "yes" or "no" 11:13:07
6 answer on whether you are providing an expert opinion
7 on the topic of fairness.

8 MR. FRAMPTON: Same objection.

9 THE WITNESS: So would you allow me a few
10 minutes to review the conclusions to my declaration? 11:13:21
11 Because I don't want to say something that is
12 contradictory to what I have said in what is submitted
13 as an expert declaration.

14 MR. BLOCK: All right. We can -- we can go
15 off the record, if you would like to do that right now. 11:13:38

16 Does counsel want to go off the record?

17 MR. FRAMPTON: No, we don't need to go off the
18 record. If he wants to review something, he can review
19 it.

20 MR. BLOCK: Well, I'm not taking time out from 11:13:47
21 the deposition for him to review what -- what his
22 expert opinions are in -- in this case.

23 So, you know, if he wants to do it during a
24 break, you know, you're welcome to, but you're not
25 using my deposition time to answer a simple question. 11:14:00

1 I mean, this witness should know what he's
2 providing an expert opinion on, so --

3 MR. FRAMPTON: And I think he's told you about
4 three times now, but again, I don't need to argue that
5 on the record. 11:14:13

6 BY MR. BLOCK:

7 Q But you know you're not providing an expert
8 opinion on whether it's fair or unfair for prepubertal
9 girls and boys in elementary school to play on coed or
10 mixed sports teams? 11:14:28

11 A I think I've already answered that question
12 with my statement about focusing on what the science is
13 saying on who has advantages.

14 Q All right. Are you qualified to offer an
15 expert opinion on fairness? 11:14:39

16 MR. FRAMPTON: Objection; form.

17 THE WITNESS: Who is a qualified expert to
18 offer an opinion on fairness?

19 BY MR. BLOCK:

20 Q I don't know. Are you? 11:14:53

21 MR. FRAMPTON: Same objection.

22 Go ahead.

23 THE WITNESS: I think I can offer fairness as
24 far as my understanding of what the policies and
25 procedures are that are set to determine what is fair 11:15:08

Page 106

1 in sports.

2 BY MR. BLOCK:

3 Q Your personal opinion; right?

4 MR. FRAMPTON: Same objection.

5 THE WITNESS: No. For instance, there are a 11:15:27

6 lot of policies that specify the -- that use of

7 performance-enhancing substances are unfair, in which

8 that is something that I would teach in my sports -- my

9 sport nutrition class. Since I'm teaching it in a

10 class, I've been judged by my peers to be an expert on 11:15:41

11 that.

12 BY MR. BLOCK:

13 Q Okay. But are you qualified to offer an

14 expert opinion on whether it's fair or unfair for girls

15 and women who are transgender to compete in women's 11:15:50

16 sports?

17 MR. FRAMPTON: Same objection.

18 THE WITNESS: Am I qualified? Well, the

19 policies state that it is not fair. And so if I am

20 following the policy, I suppose I am an expert in that. 11:16:02

21 BY MR. BLOCK:

22 Q I don't understand what that means.

23 A So when I teach in my classes, in my field, in

24 my expertise, quite often we discuss and teach about

25 the policies on what is fair participation or unfair 11:16:20

Page 107

1 participation. Since I'm teaching it and I'm judged by
2 my peers as an expert in it, then I would say I can
3 give an expert opinion on it.

4 Q Who -- who are -- who -- who judges you as
5 quali- -- what peers judge you as qualified to -- to 11:16:40
6 give an expert opinion on whether it's fair for girls
7 and women who are transgender to compete in girls and
8 women's sports?

9 A Well, my -- again, I've been accepted by my
10 peers as an expert to present on this topic, on the 11:16:59
11 participation and the physiological effects of
12 transgender individuals.

13 Q Right. My question was about fairness.

14 Have you been -- who, among your peers, have
15 said that you are qualified to opine on the fairness of 11:17:16
16 the participation of girls and women who are
17 transgender in -- in girls and women's sports?

18 A My colleagues at the university I work at,
19 administrators at the university I work at, they honor
20 my opinion. 11:17:35

21 Q I thought that your opinion in this matter
22 just reflects your own views, not the views of the
23 university; is that right?

24 A That is correct.

25 Q Okay. So what do you mean by -- when you say 11:17:43

1 that the university honors your opinion?

2 A They allow me to express my opinion, and they
3 recognize that it falls within my discipline and my
4 field and the scope of my professional expertise.

5 Q How did they recognize that? 11:18:03

6 A They've told me.

7 Q Who has told you?

8 A The athletic director, the -- one of the
9 senior vice chancellors, I can't remember her full
10 title, another one of the vice chancellors for academic 11:18:24
11 and student affairs.

12 Q Has any --

13 A Along -- along with some of my colleagues in
14 the department.

15 Q Did the university tell you to testify in this 11:18:32
16 case?

17 A The university did not tell me to or not to
18 testify in this case.

19 Q Okay. Did any of the -- your -- your
20 colleagues that honor your opinions, are any of them 11:18:43
21 experts in fairness?

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: Well, one of them is a -- I
24 guess his area would be sports sociology and sports
25 psychology and does a lot of work in the area of 11:19:03

Page 109

1 policies and procedures for sports, so I would say that
2 he's probably an expert in fairness.

3 BY MR. BLOCK:

4 Q Have you been invited by any sort of
5 professional policymaking organizations to participate 11:19:15
6 in crafting policies?

7 A No, I have not.

8 Q Okay. Do you know whether West Virginia has
9 any laws or policies regarding sex-separated sports for
10 prepubertal children? 11:19:43

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: My understanding of the law that
13 we're meeting about now does specify that you
14 participate in sports based on biological sex.

15 BY MR. BLOCK: 11:19:57

16 Q Do you -- do you know whether West Virginia
17 has any laws or policies regarding the participa- --
18 let me say this again.

19 Do you know whether West Virginia has any laws
20 or policies regarding sex-separated sports in 11:20:13
21 elementary school?

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: If I recall correctly, this law
24 applies to elementary school.

25 ///

1 BY MR. BLOCK:

2 Q Would your opinions in this case change if you
3 were to learn that the law doesn't apply to elementary
4 school?

5 MR. FRAMPTON: Objection to form. 11:20:36

6 THE WITNESS: No, my opinion would not change
7 because there are biological differences between males
8 and females that give males an inherent athletic
9 advantage.

10 BY MR. BLOCK: 11:20:45

11 Q Do you think it's reasonable for a state to
12 say that it wants sex-separated teams beginning in
13 middle school, but not in elementary school?

14 MR. FRAMPTON: Objection; form.

15 THE WITNESS: I think it is reasonable since 11:21:06
16 most of the time younger children's leagues are
17 considered developmental and the children are not
18 competing for prizes or honors. A lot of times that
19 competition begins in middle or high school.

20 MR. BLOCK: Okay. That -- that's a great 11:21:24
21 lead-in to the next exhibit. So if you would give me a
22 second to make that happen.

23 (Exhibit 69 was marked for identification
24 by the court reporter and is attached hereto.)

25 ///

1 BY MR. BLOCK:

2 Q All right. Soon appearing in your folder will
3 be a document marked Exhibit 69. Let me know when
4 that's available.

5 Do you see it? 11:22:09

6 A Exhibit 69, Briefing Book, WSPWG?

7 Q Yes. And you cite to this document in your
8 report; right?

9 A Yes, I think I do.

10 Q Okay. Great. 11:22:21

11 If you could turn to footnote 2, I believe,
12 footnote 2, page 8 of the document.

13 Can you let me know when you get to that?

14 A Footnote 2, page 8 starts off with the word
15 "endocrinologists." 11:22:51

16 Q Yes.

17 A Yes.

18 Q Okay. If you look at what that footnote 2,
19 like, refers to, in the third paragraph, beginning with
20 "at the same time." 11:23:05

21 Do you see in the text "at the same time"?

22 A Sorry.

23 Q Yeah. Sure. The third paragraph from the top
24 of the page begin- --

25 A Oh, sorry. Sorry. Yes, I've got it. 11:23:19

Page 112

1 Q Yeah. The second sentence of that paragraph,
2 it says (as read):

3 "Because the onset of male puberty -
4 normally around ages 11 - 12 in boys -
5 is the physical justification for 11:23:30
6 separate sex sport..."

7 And then that's what triggers the footnote 2;
8 correct?

9 A Yes.

10 Q Okay. And then footnote 2 says (as read): 11:23:39

11 "Endocrinologists explain that puberty
12 in boys should start between ages 9-13
13 and in girls between ages 8-12; that
14 puberty usually takes 4-5 years to
15 complete so that 95% of boys will have 11:23:53
16 started puberty by age 13. This
17 timing is consistent with the formal
18 position of the Women's Sports
19 Foundation providing that '[p]rior to
20 puberty, females and males should 11:24:05
21 compete with and against each other on
22 coeducational teams.'"

23 Did I read that correctly?

24 A Yes, you read that correctly.

25 Q Okay. And then it cites to a document from 11:24:21

Page 113

1 the Women's Sports Foundation; correct?

2 A Yes.

3 Q Did you read that document?

4 A I cannot recall specifically if I've read that
5 or not. I think I probably did, but I can't recall. 11:24:29

6 Q Okay. And so you understand that it's the
7 position of the Women's Sports Foundation that prior to
8 puberty, females and males should compete with and
9 against each other on coeducational teams?

10 A Well, that is what is stated in this document. 11:24:51

11 Q Okay. Do you feel like you -- do you feel
12 that you are qualified to offer an expert opinion on
13 the fairness of elementary school kids participating on
14 coeducational teams?

15 MR. FRAMPTON: Objection; form. 11:25:08

16 THE WITNESS: I think I can offer information
17 on the differences in -- the -- the biological
18 differences between boys and girls and how that gives
19 boys an advantage in athletics.

20 BY MR. BLOCK: 11:25:23

21 Q Do you think the Women's Sports Foundation is
22 a better source of information than you on what
23 benefits prepubertal girls in athletic participation?

24 MR. FRAMPTON: Objection; form.

25 THE WITNESS: Can you rephrase that question? 11:25:40

Page 114

1 BY MR. BLOCK:

2 Q Yeah, yeah.

3 Who -- who -- who do you think is a better
4 source of authority on -- on -- on -- on what is in the
5 best interest of prepubertal girls when it comes to 11:25:53
6 athletics, you or the Women's Sports Foundation?

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: I think this may be a situation
9 where I don't agree with the Women's Sports Foundation.

10 BY MR. BLOCK: 11:26:08

11 Q Okay. If you go back to -- to your report, on
12 page 4, page 4 of your report. It's not in numbered
13 paragraphs yet. And this is Exhibit 64, I believe.

14 A Okay. Page 4 where I have "Overview"?

15 Q Yes. 11:26:59

16 A All right.

17 Q In the first bullet point, you say (as read):

18 "At the level of (a) elite, (b)
19 collegiate, (c) scholastic, and (d)
20 recreational competition, men, 11:27:10
21 adolescent boys, or male children,
22 have an advantage over equally aged,
23 gifted, and trained women, adolescent
24 girls, or female children in almost
25 all athletic events." 11:27:19

Page 115

1 Is that right?

2 A That is correct.

3 Q Okay. So do you think that -- that
4 prepubertal boys and prepubertal girls should not be
5 playing in competition with each other in recreational 11:27:34
6 events?

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: I think if they are competing
9 for prizes, for awards, the boys have an advantage.

10 BY MR. BLOCK: 11:27:45

11 Q And, therefore, they should not be competing
12 against each other for prizes and awards?

13 MR. FRAMPTON: Objection; form, scope.

14 THE WITNESS: I would say that if we are --
15 yeah, the boys should not be competing against the 11:28:06
16 girls if they're competing for prizes and awards.

17 BY MR. BLOCK:

18 Q Do you think that in the case of transgender
19 girls and women after puberty, do you think they should
20 not be allowed to play on recreational teams with 11:28:24
21 cisgender girls and women?

22 MR. FRAMPTON: Objection; form, scope.

23 THE WITNESS: I have concerns about the safety
24 of cisgender girls and women competing against
25 biologically male -- sorry -- trans women. 11:28:45

Page 116

1 BY MR. BLOCK:

2 Q Do you think that cisgender girls and women
3 should be allowed to play on football teams with
4 biological boys?

5 MR. FRAMPTON: Objection; form, scope. 11:29:00

6 THE WITNESS: If the girls are informed of the
7 risks, then the girls should be able to make an
8 informed choice on that matter.

9 BY MR. BLOCK:

10 Q So you don't think it's the -- the -- safety 11:29:13
11 reasons should prohibit cisgender girls and women from
12 playing football with cisgender boys?

13 MR. FRAMPTON: Same objection.

14 THE WITNESS: If the girls would like to play
15 on the boys' team and they and their parents make an 11:29:28
16 informed choice that they're willing to accept those
17 risks, then I think that is up to them to choose.

18 BY MR. BLOCK:

19 Q Okay. And -- and do you think that cisgender
20 girls and women should be allowed to play on wrestling 11:29:42
21 teams with cisgender boys and men?

22 MR. FRAMPTON: Same objection.

23 THE WITNESS: I would say the same statement,
24 if they are aware of the inherent risks and recognize
25 the advantages that males have, they can make that 11:29:56

Page 117

1 choice.

2 BY MR. BLOCK:

3 Q Going back to recreational competition, do you
4 think that transgender girls and women should not be
5 allowed to play recreational sports on girls and 11:30:07
6 women's teams if the sport is a noncontact or collision
7 sport?

8 MR. FRAMPTON: Same objection.

9 THE WITNESS: If it is a women's league, then
10 that should be limited to biological women. 11:30:25

11 BY MR. BLOCK:

12 Q Even if they're not competing for prizes?

13 MR. FRAMPTON: Same objection.

14 THE WITNESS: Can I walk through this for just
15 a minute? 11:30:37

16 BY MR. BLOCK:

17 Q Sure.

18 A Oh. So if women are signing up for a women's
19 recreational league, I think they do so with the
20 expectation they will be playing -- and even if it's 11:30:47
21 not competing for prizes, but they are competing --
22 with other women. And so introducing a trans woman is
23 not fair to the women that have said that they are
24 competing against biological women.

25 Q Why isn't it fair if they're not competing for 11:31:04

Page 118

1 prizes?

2 MR. FRAMPTON: Same objection.

3 THE WITNESS: Well, if they are competing --

4 even if it's not prizes, they are competing.

5 BY MR. BLOCK: 11:31:21

6 Q What if they're just -- just participating

7 together for recreational purposes?

8 MR. FRAMPTON: Objection; form.

9 THE WITNESS: Then I think that the cisgender

10 women still need to be fully informed of whether there 11:31:38

11 will be trans women or not, and then they could make

12 their choice on a recreational pickup game type of

13 play.

14 BY MR. BLOCK:

15 Q Okay. If -- how about riflery, should 11:31:47

16 transgender girls and women be allowed to play on a

17 recreational riflery league with cisgender girls and

18 women?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: Once again, if they are just out 11:32:14

21 shooting for fun and they're not competing and the

22 recognition is that it is not exclusively a women's

23 event. All of those need to be considered.

24 BY MR. BLOCK:

25 Q Do you think transgender girls and women have 11:32:28

Page 119

1 an athletic advantage over cisgender girls and women
2 when it comes to riflery?

3 MR. FRAMPTON: Objection; form and scope.

4 THE WITNESS: Yes, I do think that transgender
5 girls and women have an advantage over cisgender girls 11:32:41
6 and women because you still have to hold the rifle, you
7 still have to feel the recoil, and a larger individual
8 will have less felt recoil.

9 BY MR. BLOCK:

10 Q So in terms of recreational activities, if a 11:33:16
11 policy said that transgender girls and women can't
12 compete in, you know, championship competition but can
13 compete on recreational teams with cisgender girls and
14 women and that policy is well known, is it your
15 position that transgender girls and women should still, 11:33:43
16 you know, not be allowed to compete on the -- to
17 participate on those recreational teams with cisgender
18 girls and women?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: It's kind of a long, complicated 11:33:57
21 question. Can you simplify it for me?

22 BY MR. BLOCK:

23 Q Well, your -- your answer on recreational
24 teams was that you want the cisgender people to be
25 informed that a transgender person might be there. 11:34:12

Page 120

1 So my question is, assuming that they're
2 informed, do you still think that transgender girls and
3 women should not be allowed to participate on
4 recreational teams with cisgender girls and women?

5 MR. FRAMPTON: Objection; form, scope. 11:34:27

6 THE WITNESS: So if the governing policies for
7 that recreational league indicate that transgender
8 girls and women can compete there and if it doesn't
9 violate some type of law that would regulate the
10 funding for that recreational league and if the 11:34:36
11 women -- if everyone is fully informed of who they will
12 be playing with in this recreational league, then that
13 would be okay for the trans women to participate in
14 that league.

15	BY MR. BLOCK:	11:34:59
----	---------------	----------

16 Q But you think that the cisgender girls and
17 women would need to be specifically notified that there
18 is an identifiable trans participant on the team as
19 opposed to just knowing that as a matter of policy
20 there might be one? 11:35:15

21 MR. FRAMPTON: Same objection.

22 THE WITNESS: My experience tells me that a
23 lot of women would like to know that.

24 BY MR. BLOCK:

25	0	Why?	11:35:23
----	---	------	----------

1 A Because --

2 MR. FRAMPTON: Same objection.

3 Go ahead.

4 THE WITNESS: Because they want to know who

5 they're competing against and because of our 11:35:29

6 longstanding policy of sex-segregated sports, they want

7 to know if they're playing on a coed team or a

8 sex-segregated team.

9 BY MR. BLOCK:

10 Q When you say your experience tells you that 11:35:42

11 women would like to know that, what experience?

12 A Talking with friends and family members,

13 students, colleagues, those types of things.

14 MR. BLOCK: So I -- I am going to another

15 section. I'm happy to continue going, unless you need 11:36:13

16 a -- a break.

17 THE WITNESS: I need a bathroom break.

18 MR. BLOCK: Sure. See you in five minutes.

19 THE WITNESS: All right. Thanks.

20 THE VIDEOGRAPHER: We are off the record at 11:36:24

21 11:36 a.m.

22 (Recess.)

23 THE VIDEOGRAPHER: We are on the record at

24 11:47 a.m.

25 MR. BLOCK: Great. 11:47:20

Page 122

1 BY MR. BLOCK:

2 Q Dr. Brown, during the break, did you have a
3 chance to review your expert report to determine
4 whether you're offering an opinions on fairness?

5 MR. FRAMPTON: Objection; form. 11:47:30

6 THE WITNESS: I didn't take advantage of that
7 time to look at that.

8 MR. BLOCK: Okay. I'm going to mark another
9 exhibit here. So this -- this exhibit, which will
10 appear shortly, is going to be marked as Exhibit 70. 11:47:58

11 (Exhibit 70 was marked for identification
12 by the court reporter and is attached hereto.)

13 BY MR. BLOCK:

14 Q Please let me know when it's up on your
15 screen. 11:48:05

16 A All right. Exhibit 70, 070 - 2021.

17 Q Yes. Can you tell me -- well, first of all,
18 have you ever seen this document?

19 A You know, I can't promise that I have seen
20 this document. 11:48:38

21 Q Okay. What does -- this is a document -- I've
22 got to scroll back up to page 1 of this document
23 myself.

24 This document is a transcript of hearings
25 in -- in the Pennsylvania house of representatives on 11:48:56

Page 123

1 H.B. 972, Fairness in Women's Sports Act.

2 Is that -- do you agree that's what this
3 document appears to be?

4 A Yes, that appears to be a transcript of a
5 hearing on that. 11:49:14

6 Q Okay. And that hearing was on August 4th,
7 2021; correct?

8 A That's what it says.

9 Q Okay. And do you remember providing testimony
10 as part of this hearing? 11:49:24

11 A I do remember providing testimony for that.

12 Q Okay. Terrific.

13 If you can go to page 15.

14 A Sorry. It's loading slowly. As I scroll, I
15 have to wait for the page to load. 11:49:54

16 Q Yeah. No, I -- I appreciate that.

17 A Okay. Page 15?

18 Q Yes.

19 A Starts off "Biological sex confers"?

20 Q Yeah. 11:50:03

21 A Okay.

22 Q "Biological" -- I'm just going to read it into
23 the record. (As read):

24 "Biological sex confers inherent
25 athletic advantages to human males 11:50:09

Page 124

1 compared to human females such that
2 even before puberty, males have
3 10 percent more muscle mass, less body
4 fat, larger hearts and lungs, denser
5 bones, and other anatomical and 11:50:20
6 physiological traits that give males
7 inherent athletic advantages over
8 comparably aged and trained females."

9 Did I read that right?

10 A Yes. 11:50:31

11 Q And do you recall giving that testimony?

12 A Yes.

13 Q Is it true that -- that prepubertal boys have
14 denser bones than prepubertal girls?

15 A I would need to look back at my research 11:50:50
16 that -- you know, the papers that I've read to see on
17 that.

18 Q Okay. Is it -- is it true that prepubertal
19 boys have larger hearts and lungs than prepubertal
20 girls? 11:51:01

21 A They have larger lungs. And again, I would
22 want to refer back to my research on the larger hearts.

23 Q Okay. Now, if you go to page 16.

24 A Okay.

25 Q Actually, go to page 17, line 3. 11:51:31

Page 125

1 You say (as read):

2 "And a male to female individual will
3 never experience nor need to learn how
4 to cope with menstrual-cycle
5 challenges, whereas 50 to 71 percent
6 of female athletes expressed concerns
7 that their menstrual cycle may
8 influence their physical performance."

11:51:49

9 Did I read that right?

10 A Yes, you did.

11:52:03

11 Q So is it your testimony that one advantage
12 that transgender girls and women have over cisgender
13 girls is that they don't have to worry about their
14 menstrual-cycle concerns?

15 MR. FRAMPTON: Objection to the form and
16 scope.

11:52:09

17 Go ahead.

18 THE WITNESS: Yes, that is what I said in this
19 situation in Philadelphia.

20 BY MR. BLOCK:

11:52:16

21 Q Okay. Do you --

22 A Sorry, Harrisburg.

23 Q Okay. Are you offering that opinion in this
24 case?

25 A I did not include that opinion in my written

11:52:23

Page 126

1 statement for this case.

2 Q Okay. Are you offering that opinions now in
3 this case?

4 A I would offer that opinions now.

5 Q Okay. And -- so do you think that cisgender 11:52:33
6 girls who are not menstruating have an advantage over
7 cisgender girls who do menstruate?

8 MR. FRAMPTON: Objection; form, scope.

9 THE WITNESS: So the research regarding the
10 effects of the menstrual cycle on athletic performance 11:52:53
11 are very difficult and very confusing and some
12 instances so -- show that phase of the menstrual cycle
13 influence a performance, some do not.

14 But as I stated there, depending on which
15 survey you're looking at, 50 to 71 percent of female 11:53:11
16 athletes are concerned that their menstrual cycle will
17 negatively impair their performance.

18 BY MR. BLOCK:

19 Q Okay. Do you think we should have separate
20 teams for girls and women who menstruate and girls and 11:53:22
21 women who don't?

22 MR. FRAMPTON: Same objection.

23 THE WITNESS: No, I do not.

24 BY MR. BLOCK:

25 Q Why not? 11:53:36

Page 127

1 A Because they're all biologically female.

2 Q Even though some of them would have the
3 advantage of not having to worry about their menstrual
4 cycle; is that right?

5 MR. FRAMPTON: Same objection. 11:53:46

6 THE WITNESS: Again, what -- can you please
7 rephrase that?

8 There were some questions -- some statements
9 in there that were more absolute than I'm comfortable
10 answering. 11:54:00

11 BY MR. BLOCK:

12 Q Okay. So despite the fact that cisgender
13 girls and women who don't menstruate don't have to
14 worry about how their menstrual cycle will affect
15 athletic performance, you think that it's still fair 11:54:13
16 for girls and women who menstruate to participate on
17 the same sports teams as girls and women who don't
18 menstruate; correct?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: So when you're talking about 11:54:30
21 menstruate, I want to make sure we're on the same page
22 here.

23 Do you mean they have lost having their
24 menstrual cycle?

25 ///

1 BY MR. BLOCK:

2 Q I -- you know, I -- some -- that -- that could
3 be one thing. Some -- some girls and women who are cis
4 don't have a menstrual cycle.

5 So for whatever reason, a cisgender girl and 11:54:58
6 women who do not menstruate, should they be playing on
7 different teams from girls and women who do menstruate?

8 MR. FRAMPTON: Objection; form and scope.

9 THE WITNESS: So loss of the menstrual cycle
10 is generally a negative connotation for a woman in 11:55:15
11 terms of athletic performance. It would indicate
12 somewhere progressing on the female athlete triad. And
13 so they're still biological women. They should still
14 be on the women's team.

15 BY MR. BLOCK: 11:55:39

16 Q So is it really relevant one way or another
17 whether or not someone is menstruating to their
18 athletic performance?

19 MR. FRAMPTON: Same objection.

20 THE WITNESS: Again, 50 to 71 percent of 11:55:47
21 female athletes are concerned that their menstrual
22 cycle will influence their physical athletic
23 performance.

24 BY MR. BLOCK:

25 Q So is it relevant to their athletic 11:56:01

1 performance whether or not someone is menstruating?

2 MR. FRAMPTON: Same objection.

3 THE WITNESS: For some women, it is. For some
4 women, it is not.

5 BY MR. BLOCK: 11:56:21

6 Q In your report, you refer, several times, to
7 something called "puberty blockers"; right?

8 A Yes.

9 Q Okay. So I want to make sure that we're using
10 the same terminology when we're using that phrase. 11:56:34

11 When I use the phrase "puberty blockers," I'm
12 referring to gonadotropin-releasing hormone analogues.

13 Is that consistent with your understanding of
14 the term "puberty blockers"?

15 A I know the gonadotropin-releasing hormone. I 11:56:53
16 cannot remember if the word is "analogues" or
17 "antagonists" or "agonists."

18 Q Okay. So GR- --

19 A GnR- -- yes.

20 Q I'm sorry, can you say that again? 11:57:06

21 A Yeah. G-N-R-H-As. And again --

22 Q So --

23 A -- I cannot remember specifically what the A
24 stands for.

25 Q So -- so it's your understanding that the term 11:57:13

Page 130

1 "hormone blockers" refers to GnRHa's; correct?

2 A Puberty blockers.

3 Q Sorry. Puberty blockers.

4 It's your understanding that the term "puberty

5 blocker" refers to the GnRHa's; correct? 11:57:27

6 A That is correct.

7 Q Okay. Great.

8 If we go to paragraph 110 of your report --

9 again, that's Exhibit 64. Let me know when you're --

10 when you get there. 11:57:39

11 A Paragraph 110 is what I'm headed for?

12 Q Yep.

13 A All right. Paragraph 110, page 36.

14 Q Great. So in paragraph 110, you say -- if you
15 go, like -- one, two, three, four -- five lines down, 11:58:18

16 after the parenthetical number 9, you say (as read):

17 "While it is outside my expertise, my

18 understanding is that current practice

19 with regard to administration of

20 puberty blockers is similar in the 11:58:33

21 United States."

22 I think you're referring to as in the UK; is

23 that correct?

24 A Yes.

25 Q Okay. And then you say (as read): 11:58:43

Page 131

1 "Tanner stages 2 and 3 generally

2 encompass" --

3 You say "an range," but I think you mean "a

4 range" -- sorry -- "a age range" -- no, I messed that

5 up. I'll say that again. I apologize for inserting an 11:59:00

6 error into your -- your sentence.

7 You say (as read):

8 "Tanner stages 2 and 3 generally

9 encompass an age range from 10 to 14

10 years old, with significant 11:59:07

11 differences between individuals."

12 And then you go on to say that you're not

13 aware of research directly addressing the implications

14 for athletic capability of the use of puberty blockers.

15 So, you know, my question is, when you wrote 11:59:24

16 that paragraph, did you think it -- did you consult the

17 Endocrine Society guidelines that we had previously

18 discussed?

19 MR. FRAMPTON: Objection to form.

20 THE WITNESS: I cannot recall if I 11:59:45

21 specifically looked at the Endocrine Society guidelines

22 as I was writing that. As I -- as I said, "as I

23 recall," I think, is the wording I used.

24 BY MR. BLOCK:

25 Q Okay. Did you make any effort to determine 11:59:57

1 what the -- the practice in the United States is with
2 regard to administering puberty blockers?

3 MR. FRAMPTON: Objection; form.

4 Go ahead.

5 THE WITNESS: Well, there's the 12:00:13

6 Endocrine Society guidelines, but those are not
7 specific to the United States, if I recall, and so I --

8 BY MR. BLOCK:

9 Q Right.

10 A -- don't know of a specific United States 12:00:22

11 policy compared to the UK policy. I think it's more of
12 a this is the policy.

13 Q Yeah, got it.

14 But did you make any effort to determine what
15 the practice is in the United States? 12:00:35

16 A I'm -- yes, I know I did look into it.

17 Q How? How did you look into it?

18 A Reading scholarly literature on the topic to
19 see what it says. Looking at web pages on the topic.

20 Q So -- so you read scholarly literature and web 12:00:57

21 pages on the topic and you couldn't determine whether
22 the practice in the United States is to administer
23 puberty blockers at Tanner II versus Tanner III?

24 MR. FRAMPTON: Objection; form.

25 THE WITNESS: As I said there, my -- that is 12:01:16

Page 133

1 outside my scope of my expertise, and so I don't want
2 to be construed as saying this is the policy. So I was
3 trying to make sure that I was not giving specific
4 medical advice on when someone should be administering
5 puberty blockers. 12:01:32

6 BY MR. BLOCK:

7 Q If you submitted an article to a peer-reviewed
8 journal and it included a sentence saying "while it is
9 outside my expertise, my understanding is that," you
10 know, and then the sentence continued, do you think 12:01:48
11 that type of statement would be accepted in a
12 peer-reviewed article?

13 A It would need to be taken in the context of
14 the type of article. And some reviewers would find it
15 acceptable because -- acknowledging what I don't know, 12:02:06
16 and others would say perhaps not.

17 Q Do you think that your expert report in this
18 case should be held to the same standards that a
19 peer-reviewed article would be held to?

20 MR. FRAMPTON: Objection; form, scope. 12:02:21

21 THE WITNESS: No, this is not held in the same
22 standards of a peer-reviewed article.

23 BY MR. BLOCK:

24 Q Why not?

25 A This is written for a different audience. 12:02:31

Page 134

1 Q So why -- why should it not be held to the
2 same standards?

3 MR. FRAMPTON: Objection; form and scope.

4 THE WITNESS: Once again, this is written for
5 a different audience. This is not written for the 12:02:48
6 other experts in the field. This is written to provide
7 information to policymakers and in a legal situation
8 like this.

9 BY MR. BLOCK:

10 Q Well, but do you think that the -- regardless 12:02:58
11 of the style in which something is written, do you
12 think the same underlying rigor should be required for
13 an expert report as a peer-reviewed article?

14 MR. FRAMPTON: Objection; form and scope.

15 THE WITNESS: No, an expert report is not 12:03:17
16 going to be held to the same rigor as a peer-reviewed
17 article.

18 BY MR. BLOCK:

19 Q Okay. So you -- do you think that the
20 opinions expressed in an expert report don't have to be 12:03:27
21 as reliable as the opinions expressed in a
22 peer-reviewed article?

23 MR. FRAMPTON: Objection; form and scope.

24 THE WITNESS: The opinions in an expert report
25 need to be accurate, they need to be correct. 12:03:43

Page 135

1 BY MR. BLOCK:

2 Q Yeah, but that wasn't my question.

3 Can you answer my question, please?

4 A Can you restate my your question, please?

5 MR. BLOCK: Could the reporter read back my 12:03:50
6 question?

7 THE REPORTER: Yes.

8 (Record read.)

9 MR. FRAMPTON: Objection; form and scope.

10 THE WITNESS: Generally, in a peer-reviewed 12:04:16
11 article, you are not providing opinions; you are
12 summarizing literature. And that's primarily what I've
13 done here, is summarize literature.

14 BY MR. BLOCK:

15 Q Do you think the accuracy of the -- of your 12:04:26
16 summaries in an expert report should be held to the
17 same standard as the accuracy of summaries in a
18 peer-reviewed article?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: The information needs to be 12:04:43
21 correct, accurate, truthful.

22 MR. BLOCK: Can you read back my question,
23 Reporter?

24 (Record read.)

25 MR. FRAMPTON: Objection; form and scope. 12:05:06

Page 136

1 THE WITNESS: I thought I answered that by
2 saying it needs to be accurate and correct and
3 truthful.

4 BY MR. BLOCK:

5 Q Can you answer the question? 12:05:13

6 I -- I asked -- give me a "yes" or "no"
7 answer, please.

8 MR. FRAMPTON: Same objection.

9 THE WITNESS: I don't know that this is really
10 a yes-or-no question. 12:05:25

11 BY MR. BLOCK:

12 Q Are there different standards of accuracy for
13 an expert report than for a peer-reviewed article?

14 MR. FRAMPTON: Objection; form and scope.

15 THE WITNESS: They both need to be accurate 12:05:45
16 and correct. The writing style is so phenomenally
17 different.

18 BY MR. BLOCK:

19 Q All right. But they -- but the accuracy needs
20 to be the same; correct? 12:05:58

21 MR. FRAMPTON: Same objection.

22 THE WITNESS: Yes, they need to be accurate
23 and correct.

24 BY MR. BLOCK:

25 Q Okay. Is it fair to say that you did not 12:06:03

Page 137

1 approach the task of writing this report with the same
2 analytical rigor that you would have approached the
3 task of writing a peer-reviewed article?

4 MR. FRAMPTON: Objection; form and scope.

5 THE WITNESS: That would not be a correct 12:06:16
6 statement.

7 BY MR. BLOCK:

8 Q Okay. Would you be comfortable submitting the
9 opinions that you expressed in this report in a
10 peer-reviewed article? 12:06:26

11 A Yes, I would be comfortable submitting them in
12 a peer-reviewed article.

13 Q Okay. If we could go back to your report, to
14 paragraph 111. So your report is Exhibit 64.

15 A So paragraph 111 starts "Tack et al." 12:06:50

16 Q Yes, it does.

17 It says (as read):

18 "Tack et al. (2018) observed that in

19 21 transgender-identifying biological

20 males, administration of antiandrogens 12:07:02

21 for 5-31 months (commencing at 16.3 ±

22 1.21 years of age)" --

23 And then I think it says "age" again in

24 parentheses. Or -- or is that just in my copy? I'm

25 sorry. I -- this is the second time I've -- I've 12:07:17

Page 138

1 introduced an error into your words, so I will start
2 that over again.

3 (As read):

4 "111. Tack et al. (2018) observed
5 that in 21 transgender-identifying 12:07:31
6 biological males, administration of
7 antiandrogens for 5-31 months
8 (commencing at 16.3 ± 1.21 years of
9 age) resulted in nearly, but not
10 completely, halting of normal 12:07:45
11 age-related increases in muscle
12 strength."

13 Okay. Did I read that correctly?

14 A Yes, you did.

15 MR. BLOCK: All right. Sorry for the error 12:07:54
16 the first time around.

17 So I'm going to introduce an exhibit now.

18 Okay. And so this exhibit, when it -- when it
19 pops up in your folder, will be marked Exhibit 71.

20 (Exhibit 71 was marked for identification 12:08:26
21 by the court reporter and is attached hereto.)

22 BY MR. BLOCK:

23 Q Can you please let me know when you see it.

24 A All right. Exhibit 71.

25 Q All right. Is that -- is this the Tack 12:08:41

Page 139

1 article that you are referring to?

2 A Yes, it is.

3 Q Okay. Great.

4 So do you think this article is relevant to

5 the discussion about whether transgender girls who 12:08:53

6 receive puberty blockers have an athletic advantage

7 over cisgender girls?

8 A Yes, I think it is relevant.

9 Q Okay. Now, if you remember the conversation

10 we had a few minutes ago, we agreed that puberty 12:09:06

11 blockers referred to -- refers to GnRHa's; correct?

12 A That is correct.

13 Q Okay. Did any of the transgender girls in the

14 study receive GnRHa's?

15 A Not as I recall. 12:09:22

16 Q In fact, the transgender girls in the study

17 actually received a different type of hormone

18 medication called progestins; isn't that right?

19 A That is correct.

20 Q So this isn't actually a study about puberty 12:09:43

21 blockers, is it?

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: I never said this was a study

24 about puberty blockers.

25 ///

1 BY MR. BLOCK:

2 Q Why did you include this paragraph in a
3 discussion about the effects of puberty blockers?

4 A Well, I clarified, in this paragraph, that
5 they were using antiandrogens. Because as the authors 12:10:05
6 have stated on page 2148 (as read):

7 This will contribute to determining
8 the place of GnRHa and progestins,
9 respectively, in the pharmacological
10 treatment of trans youth and to 12:10:20
11 improving our knowledge on the
12 long-term effects of these
13 interventions, as has been suggested
14 recently.

15 And then they cite a source. 12:10:27

16 Q So in paragraph 110 of your report, you begin
17 a discussion about the effects of puberty blockers on
18 athletic performance; correct?

19 A Let me refer back to -- just to make sure
20 we've got the right paragraph number there. 12:10:47

21 Paragraph 110. Yes, that paragraph does bring
22 up the idea of puberty suppression and puberty
23 blockers.

24 Q Okay. And then in paragraph 111, you discuss
25 this article by Tack; correct? 12:11:22

Page 141

1 A That is correct.

2 Q And then in paragraph 112, you say (as read):

3 "Klaver et al. (2018 at 256)

4 demonstrated that the use of puberty

5 blockers did not eliminate the 12:11:37

6 differences in lean body mass between

7 biological male and female teenagers."

8 Correct?

9 A That is correct.

10 Q And then paragraph 113, again, begins with the 12:11:44

11 words "the effects of puberty blockers"; isn't that

12 right?

13 A That is correct.

14 Q Okay. So paragraph 110, 112 and 113 are all

15 discussing the effects of puberty blockers; correct? 12:11:55

16 A Yes.

17 Q And -- but paragraph 111, which is in between

18 110 and 112, is describing a study that does not

19 involve puberty blockers; correct?

20 MR. FRAMPTON: Objection; form. 12:12:15

21 THE WITNESS: That's correct.

22 BY MR. BLOCK:

23 Q Do you think that someone reading your report

24 could form the false impression that this article in

25 fact discusses puberty blockers when in reality it 12:12:24

Page 142

1 doesn't?

2 MR. FRAMPTON: Objection; form.

3 THE WITNESS: If someone is reading it and
4 pays attention to the statement of antiandrogens, they
5 would know that those are not puberty blockers. 12:12:35

6 BY MR. BLOCK:

7 Q Do you -- I thought you said recently that
8 this report is not meant for an audience of experts in
9 the field; right?

10 MR. FRAMPTON: Objection; form. 12:12:46

11 THE WITNESS: That is correct.

12 BY MR. BLOCK:

13 Q Okay. So do you think a lay audience, not of
14 experts in the field, would immediately understand that
15 antiandrogens are different from puberty blockers in 12:12:58
16 the context of this discussion?

17 MR. FRAMPTON: Objection; form.

18 THE WITNESS: So that's a difficult question
19 for me to answer because as I read through it, I notice
20 paragraph 110, puberty blockers, 112, -13, -14, all 12:13:13
21 specifically state puberty blockers, 111 states
22 antiandrogens. As I read that, as a critical thinker,
23 I would then say, well, why does this say antiandrogens
24 rather than puberty blockers and what -- learn the
25 difference. 12:13:32

Page 143

1 BY MR. BLOCK:

2 Q So why does a paragraph in your report, in the
3 middle of discussing puberty blockers, talk about
4 antiandrogens at all?

5 A Because, to the best of my knowledge, that is 12:13:43
6 the only research that is out there on the effects of
7 transgender hormone treatment in teenagers on muscle
8 strength.

9 Q I see. But wouldn't it be better to include
10 that article in the subsequent sections of your report 12:14:01
11 that discuss the effect of suppressing testosterone?

12 MR. FRAMPTON: Objection; form.

13 THE WITNESS: I think this is a matter of
14 opinion. I think it fits well because this is focusing
15 on transgender youth. 12:14:17

16 BY MR. BLOCK:

17 Q Oh, okay. So your -- your testimony is this
18 section of the article is supposed to address the topic
19 of transgender youth in general and not the topic of
20 puberty suppression. Is that your testimony? 12:14:32

21 A No. My testimony is this is about transgender
22 youth, including puberty suppression, and what we know
23 on the topic of transgender youth and how it would
24 affect athletic performance.

25 Q I see. Let's go to the beginning of this 12:14:49

Page 144

1 section, which is several pages up. It's a long
2 section. But the section begins on page 28 of your
3 report. 23 on the bottom pagination, 28 of the PDF.
4 And paragraph 68.

5 A All right. 12:15:28

6 Q Okay. So beginning with paragraph 68, you are
7 discussing -- oh, sorry. I -- can we just go a little
8 further down, to subsection A? I skipped over it
9 myself. So this is actually paragraph 71.

10 A Okay. 12:15:55

11 Q Thank you.

12 So subsection A (as read):

13 "Boys exhibit advantages in athletic
14 performance even before puberty."

15 Did I correctly read that that's the 12:16:04
16 subsection?

17 A Yes, that is correct.

18 Q Okay. And then, you know, if you -- if you
19 continue scrolling, you can take your time, it's a
20 bunch of paragraphs on, you know, physiological 12:16:14
21 characteristics before puberty, athletic performance
22 before puberty; correct?

23 A Yes.

24 Q All right. And if you keep -- keep scrolling,
25 I think all the way until we get to -- I -- I believe 12:16:31

Page 145

1 it's paragraph 110.

2 A Yes.

3 Q All right. So for all these paragraphs until
4 110, you've been discussing characteristics of boys
5 before puberty; correct? 12:16:53

6 A Yes. The athletic differences and
7 physiological differences between biolo- -- between
8 boys and girls before puberty.

9 Q Okay. And then in paragraph 110, you say (as
10 read): 12:17:03

11 "For the most part, the data I review
12 above relate to pre-pubertal children.

13 Today, we also face the question of
14 inclusion in female athletics of males
15 who have undergone 'puberty 12:17:13

16 suppression.' "

17 Isn't that right?

18 A Yes.

19 Q Okay. So what connects paragraph 110 to
20 everything that came before it, as I understand it, is 12:17:22
21 that it's supposed to provide information on athletic
22 performance and advantages of what you call biological
23 males who have not experienced endogenous, typically
24 male, puberty yet; correct?

25 MR. FRAMPTON: Objection; form. 12:17:49

Page 146

1 THE WITNESS: Yes, so if I understand what
2 you're referring to there, there's a lot of paragraphs
3 there about the differences between males and females
4 before puberty.

5 BY MR. BLOCK: 12:18:02

6 Q Right. Okay.

7 And so -- and what thematically connects that
8 to puberty blockers is that -- the argument is that
9 girls who are transgender and on puberty blockers never
10 experience, typically, male puberty; correct? 12:18:15

11 MR. FRAMPTON: Same objection. Objection to
12 form.

13 THE WITNESS: Can you state that again,
14 please?

15 BY MR. BLOCK: 12:18:25

16 Q Yeah. So transgender girls on hormone
17 blockers never experience, typically, male puberty if
18 they begin the blockers at stage Tanner II; is that
19 right?

20 MR. FRAMPTON: Objection; form, scope. 12:18:39

21 THE WITNESS: That is my understanding.

22 BY MR. BLOCK:

23 Q Okay. And so that's thematically what
24 connects the discussion of prepubertal kids to the
25 discussion of trans girls on puberty blockers; correct? 12:18:52

Page 147

1 MR. FRAMPTON: Objection; form.

2 THE WITNESS: So what you're saying is there's
3 kind of a rough transition there?

4 BY MR. BLOCK:

5 Q Well, I -- I'm saying that -- I'm just asking 12:19:04
6 why are they in the same subsection that discusses
7 biological males before puberty?

8 A Well, because the puberty blockers would halt
9 puberty. That is the purpose of them.

10 Q Exactly. So this then leads to my question of 12:19:24
11 why do you then have a paragraph discussing
12 antiandrogens administered, you know, near the end of
13 puberty?

14 MR. FRAMPTON: Objection; form.

15 THE WITNESS: Because that is the only 12:19:42
16 information we have on teenagers and how their gender
17 treatment of hormones would be influenced.

18 If you look at some of those previous tables
19 and the tables in the appendix that go along with that,
20 they go up to 17-year-old children. 12:19:57

21 BY MR. BLOCK:

22 Q Right. But the -- the subsection is talking
23 ability prepubertal children; right?

24 MR. FRAMPTON: Objection; form.

25 THE WITNESS: That is the primary focus of 12:20:06

Page 148

1 that subjection, yes.

2 BY MR. BLOCK:

3 Q Okay. And the -- the teenagers discussed in
4 the Tack study are not prepubertal teenagers; correct?

5 A That's correct. They are mid-prepubertal. 12:20:26

6 Q All right. Well, now let's look at
7 paragraph 112 of your report which discusses a 2018
8 study by Klaver.

9 Is that your understanding of how to pronounce
10 the name Klaver? 12:20:41

11 A Yes, that is my understanding of how to
12 pronounce the name. Thanks for asking.

13 MR. BLOCK: Okay. Great. And please feel
14 free to correct me if I pronounce anyone else's name
15 incorrectly. 12:20:54

16 All right. I'm going to introduce an exhibit.
17 This exhibit, when it appears on your screen, is going
18 to be marked as Exhibit 72.

19 (Exhibit 72 was marked for identification
20 by the court reporter and is attached hereto.) 12:21:14

21 BY MR. BLOCK:

22 Q Please let me know when it's visible.

23 A Exhibit 072 - Klaver - Early Hormonal
24 Treatment...

25 Q Right. And is this the article that you're 12:21:28

Page 149

1 referring -- that you are referring to in
2 paragraph 112?

3 A I think so. Without double-checking between
4 my references cited, I -- I think this is the same
5 article. 12:21:46

6 Q Okay. Is it your understanding that the
7 people in this study received puberty blockers at the
8 beginning of Tanner II?

9 A As I recall, they received puberty blockers,
10 and I cannot recall the Tanner stage. I remember it 12:22:06
11 giving the ages.

12 Q Okay. What -- what age?

13 A Average age of fourteen and a half, if I
14 remember correctly.

15 Q Okay. And is fourteen and a half typically 12:22:15
16 the beginning of Tanner stage II?

17 A Not typically.

18 Q Okay. So if you go to page 254 of the Klaver
19 study --

20 A 2-5-4, yes. 12:22:37

21 Q All right. 2-5-4.

22 And if you look at the column that says

23 "Transwomen," it says (as read):

24 "Age at start of GnRHa, 14.5 ± 1.8."

25 Is that right? 12:22:59

Page 150

1 A Yes.

2 Q Okay. And so accord- -- so with those
3 figures, that means that the earliest that any of the
4 trans girls in the study received puberty blockers was
5 at age 12.7; correct? 12:23:14

6 A Do you want me to take the time to do the math
7 on that?

8 Q Well, 14.5 minus 1.8 is 12.7, but --

9 A So that's only one standard deviation. That
10 only accounts for, basically, a third of the 12:23:37
11 individuals below and above that age. So take out
12 another 1.8 to get two standard deviations away.

13 Q Got it.

14 A And you take they way that 1.8 again to
15 encompass the whole 99.99 percent. 12:23:50

16 Q Oh, okay. So what's your understanding of the
17 youngest age at which someone -- the girls in the study
18 receive puberty blockers, just -- if you can do it
19 or -- without --

20 A Just eyeball it. I'll say 10.7. 12:24:04

21 Q Okay. Thank you.

22 But the average age is 14.5; right?

23 A That is the average age, yes.

24 Q Okay. Great.

25 Now, you see in paragraph 112 of your report, 12:24:14

Page 151

1 which -- let me pull it up directly so I don't misread
2 it again.

3 Paragraph 112 of your report, the first
4 sentence you say (as read):

5 "Klaver et al. (2018 at 256) 12:24:29
6 demonstrated that the use of puberty
7 blockers did not eliminate the
8 differences in lean body mass between
9 biological male and female teenagers."

10 Did I read that right? 12:24:40

11 A I'm still getting to 112, sorry.

12 That -- that -- that sounds correct, but I'm
13 not --

14 Q Right.

15 A -- there to verify. 12:24:49

16 All right. Now I'm at 112.

17 Q Okay. I'll read it again. (As read):

18 "Klaver et al. (2018 at 256)
19 demonstrated that the use of puberty
20 blockers did not eliminate the 12:25:03
21 differences in lean body mass between
22 biological male and female teenagers."

23 Did I read that sentence right?

24 A Yes.

25 Q Okay. And then it says (as read): 12:25:09

Page 152

1 "Subsequent use of puberty blockers
2 combined with cross-sex hormone use
3 (in the same subjects) still did not
4 eliminate the differences in lean body
5 mass between biological male and 12:25:19
6 female teenagers."

7 Is that right?

8 A Yes.

9 Q Okay. Great.

10 Did Klaver report any findings on percentage 12:25:26
11 of body fat?

12 A Let me look.

13 Yes.

14 Q And -- and what were the findings on -- on
15 body fat? 12:25:45

16 A Just looking at it to make sure I'm reading
17 these correctly.

18 So it gives -- this is table -- or, sorry,
19 figure 2. At the top of figure 2, there is percent
20 body fat presented. 12:26:08

21 Q Yep. And the first part of that graph,
22 page 256, table 2, shows the percent body fat of the
23 trans women being virtually the same as the body fat of
24 the cis women; correct?

25 A Sorry, how do you zoom on this Exhibit Share? 12:26:26

Page 153

1 It's a tiny graph on my screen.

2 MS. DUPHILY: If you take your mouse on to the
3 bottom and push, you should be able to see a plus and a
4 minus to make it look bigger.

5 THE WITNESS: Okay. Ah, there we are. 12:26:47

6 All right. Sorry, it's taking me a minute to
7 zoom in on that.

8 MR. BLOCK: Sure thing.

9 THE WITNESS: Okay. So to make sure we're
10 looking at the same figure, the trans women are shown 12:27:05
11 in the solid line, the trans men are shown in the light
12 gray line, the cis men are shown in the dotted line,
13 and the cis women are shown in the hash line; correct?

14 BY MR. BLOCK:

15 Q Correct. 12:27:19

16 A Okay. So the percent body fat in the trans
17 women and the percent body fat in the cis women, the
18 lines overlap at the part indicated as "Start CHT."

19 Q Okay. So that indicates that by the time the
20 trans women in the study had begun CHT, their 12:27:42
21 percentages of body fat overlapped with the percentages
22 of body fat for cis women; right?

23 A That is correct.

24 Q Okay. And is body fat -- percentage of body
25 fat a factor in athletic advantage? 12:28:01

Page 154

1 A Yes, it is. Having excess body fat is
2 considered a disadvantage.

3 Q Okay. So why didn't you mention this finding
4 in your summary of the Klaver study?

5 A Because I mentioned the next part of the 12:28:16
6 figure demonstrating that there was not elimination of
7 the difference in lean body mass.

8 Q No, I understand that, but why did you just
9 report on the lean body mass and not the body fat
10 finding? 12:28:31

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: Because lean body mass is a more
13 important determinant of athletic performance.

14 BY MR. BLOCK:

15 Q I see. Does your report ever say that lean 12:28:45
16 body mass is a more important determinant?

17 MR. FRAMPTON: Objection; form.

18 THE WITNESS: I have stated multiple times in
19 there that lean body mass is a determinant of athletic
20 performance, and I've stated that -- and I have stated 12:29:02
21 that excess body fat is a disadvantage.

22 BY MR. BLOCK:

23 Q Okay. But my question is, do you state that

24 lean body mass is a more important determinant?

25	MR. FRAMPTON: Objection; form.	12:29:19
----	--------------------------------	----------

Page 155

1 THE WITNESS: I don't recall where I specified
2 which is more or least important in --

3 MR. BLOCK: Okay.

4 THE WITNESS: -- in regards to body
5 composition. 12:29:23

6 BY MR. BLOCK:

7 Q Okay. You have a whole section in your report
8 on the subject of body fat percentage; correct?

9 A Again, I would have to look to see if it's a
10 whole section, if we're talking about a couple 12:29:38
11 paragraphs, a couple of pages or whatnot, but, yes, I
12 talk about body composition.

13 Q Okay. And you don't cite this study when you
14 discuss body composition related to fat; correct?

15 A So I'm -- you're saying that I'm not citing 12:29:51
16 Klaver in my previous discussions of body composition
17 as a determinant of athletic performance?

18 Q In your discussion of the role of body fat in
19 the -- as a determinant of athletic performance, you
20 never cite to the findings of this Klaver article; 12:30:09
21 correct?

22 A I -- I don't think so. I think these are the
23 only paragraphs where I cite the Klaver articles, and
24 we're talking specifically about with the puberty
25 blockers. 12:30:23

Page 156

1 Q I see. So -- but you -- you cite a finding of
2 the Klaver article that you think is -- supports your
3 view, but you don't cite a finding of the Klaver
4 article that cuts against your view. Is that a fair
5 statement? 12:30:41

6 MR. FRAMPTON: Objection; form.

7 THE WITNESS: Yes, I would say that it's fair
8 to say that I don't cite Klaver on the differences in
9 percent body fat.

10 BY MR. BLOCK: 12:30:55

11 Q Okay. So you testified earlier that you think
12 that an expert report needs to be held to the same
13 standards of accuracy as a peer-reviewed article;
14 right?

15 A Yes, that is correct. 12:31:06

16 MR. FRAMPTON: Objection --

17 THE WITNESS: Oh, sorry.

18 BY MR. BLOCK:

19 Q So do -- do you think your -- your paragraph
20 about Klaver is an accurate summary of the article in 12:31:14
21 its entirety?

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: The paragraph is not intended to
24 be a summary of the article in its entirety.

25 ///

1 BY MR. BLOCK:

2 Q Okay. The paragraph is -- is just intended to
3 pick out the portions of the article that support your
4 argument; is that right?

5 MR. FRAMPTON: Objection; form. 12:31:33

6 THE WITNESS: The paragraph is intended to
7 demonstrate that biological males retain athletic
8 advantages.

9 BY MR. BLOCK:

10 Q Well, the -- the article doesn't say anything 12:31:44
11 about athletic advantages; correct?

12 A I do not recall that the article uses the word
13 "athletic advantages."

14 Q All right. If you go to -- if you look at
15 page 255 of the Klaver article. So I think that's, 12:32:02
16 like, one page before the -- the -- where we were
17 looking.

18 A You're looking at table 2?

19 Q No. I'm -- I am just looking at the -- the --
20 the text of it. 12:32:25

21 A Okay.

22 Q If you look at the first full sentence in the
23 text that begins with "As a result."

24 A Okay.

25 Q Do you see that? 12:32:45

Page 158

1 A Yes, I do.

2 Q All right. It says (as read):

3 "As a result of these changes, in
4 young adult transwomen at age 22" --

5 Excuse me. (As read): 12:32:56

6 "As a result of these changes, in
7 young adult transwomen at 22 years of
8 age, SDS for WHR, body fat, and LBM
9 showed greater similarity to ciswomen
10 than to cismen." 12:33:08

11 Did I read that correctly?

12 A Yes, you read that correctly.

13 Q Okay. And do you mention that finding in your
14 report?

15 A I do not think I quote that in my report. 12:33:17

16 Q Okay. All right.

17 MR. BLOCK: It's 1:30 -- can we go off the
18 record?

19 THE WITNESS: Is that okay with you going off
20 the record? 12:33:41

21 MS. DUPHILY: Kimberlee, are you there?

22 THE WITNESS: Nope.

23 MS. DUPHILY: We're going off the record at
24 approximately 1:32 p.m. [Sic]

25 (Recess.) 12:38:29

Page 159

1 THE VIDEOGRAPHER: We are on the record at
2 12:38 p.m.

3 MR. BLOCK: Okay. Great.

4 BY MR. BLOCK:

5 Q I'd like to move on from the topic of puberty 12:38:43
6 blockers and ask a few questions about trans women who
7 suppress circulating levels of testosterone after
8 puberty.

9 Can we turn to page 56 of your report?

10 A Come on. Waiting for it to load. 12:39:04

11 All right. So page 56 by the page numbers;
12 correct?

13 Q Correct.

14 A All right. I'm there.

15 Q Great. So if you go to the third bullet 12:39:27
16 point, you say (as read):

17 "The administration of androgen
18 inhibitors and cross-sex hormones to
19 men or adolescent boys after the onset
20 of male puberty does not eliminate the 12:39:40
21 performance advantage that men and
22 adolescent boys have over women and
23 adolescent girls in almost all
24 athletic events."

25 Did I read that right? 12:39:50

Page 160

1 A Yes, you did.

2 Q Okay. Great.

3 Have you read the expert reports that -- the
4 expert reports that Dr. Safer submitted in this case?

5 A Yes, I read the reports by Dr. Safer. 12:40:00

6 Q All right. You read both the initial and the
7 rebuttal reports?

8 A Yes.

9 Q Okay. Isn't it fair to say that the effects
10 of male to female hormone treatment on important 12:40:10
11 determinants of athletic performance still remain
12 largely unknown?

13 MR. FRAMPTON: Object to form.

14 THE WITNESS: Sorry, I blanked out there for a
15 second after the objection. 12:40:28

16 There are still a lot of questions. There are
17 still a lot of questions.

18 MR. BLOCK: Okay. So I'd like to show you
19 another exhibit. And we have to mark it as such.

20 All right. This is going to hopefully appear 12:41:08
21 on your screen as Exhibit 73.

22 (Exhibit 73 was marked for identification
23 by the court reporter and is attached hereto.)

24 BY MR. BLOCK:

25 Q Can you let me know when -- when you see it? 12:41:18

Page 161

1 A All right. Exhibit 073 - Brown Blog Post.

2 Q Yes. Do you recognize what this document is?

3 A Yes.

4 Q What is it?

5 A That is my blog post for the Physiology 12:41:38

6 Educators Community of Practice about The Olympics,

7 sex, and gender in the physiology classroom.

8 Q Okay. What -- what is the Physi- --

9 Physiology Educators Community of Practice blog?

10 A So this is a blog sponsored by the American 12:41:58

11 Physiological Society and their -- specifically their

12 educators' interest group -- it probably has a

13 different name than that, but that's what it is -- just

14 sharing information for other teachers in physiology,

15 typically geared towards college-level educators. 12:42:16

16 Q And is there a submission process?

17 A Yes, there is.

18 Q What -- what is that submission process?

19 A Well, you have to contact the person that runs

20 the blog post and say you are interested. They connect 12:42:33

21 you, then, to the editor for Advances in Physiology

22 Education who then asks what you would like to blog on

23 and lets you know of available times, and then once you

24 agree on that, you'll submit it. And then, once again,

25 the editor reviews it, someone else associated also 12:42:55

Page 162

1 reviews it prior to being put up on the web.

2 Q Okay. And so did you reach out with your
3 interest in -- in submitting something?

4 A Yes, I did.

5 Q You weren't invited to submit something; 12:43:13
6 correct?

7 A I did receive an in- -- an e-mail inviting to
8 submit to the Peacock blog, and I e-mailed back and
9 said, yes, I'm interested.

10 Q And did -- were you invited to submit 12:43:27
11 something on the topic of transgender women
12 participating in sports?

13 A The invitation was not specific on what I
14 was -- would be blogging on.

15 Q And was it an invitation to you individually, 12:43:43
16 or was it an invitation to a larger group?

17 A I think both, honestly. There is an
18 invitation that goes out, periodically, to the larger
19 group of published a paper in Advances in Physiology
20 Education and received an invitation to me. 12:44:03

21 Q Okay. And so did this blog go through a
22 revision process after you first submitted it?

23 A There was one round of revisions, if I
24 remember correctly.

25 Q Okay. And do you remember what feedback you 12:44:23

Page 163

1 got during the revision process?

2 A The feedback was very positive, and I was told
3 that this is an extremely important topic that needs to
4 be presented. And I really think the feedback was
5 relevant to the -- the -- the graph that I had in there 12:44:41
6 to ensure that I had appropriate copyright permission
7 or whatever permission to have that reproduced.

8 Q Okay. Great.

9 This blog post doesn't discuss prepubertal
10 children; right? 12:44:57

11 A Sorry, I'm just reviewing it to see.

12 I don't recall that it discusses prepubertal
13 children.

14 Q And the blog also doesn't discuss trans girls
15 and women who received puberty blockers and never went 12:45:25
16 through endogenous puberty; right?

17 MR. FRAMPTON: Objection to the form.

18 THE WITNESS: I don't recall discussing that
19 in there, and I'm not seeing it, as I look at the blog
20 post. 12:45:43

21 BY MR. BLOCK:

22 Q Okay. So if you can just go to page 2, and if
23 you go to the first full paragraph on page 2, beginning
24 with the -- the second sentence, do you --

25 A Yes. 12:46:04

Page 164

1 Q -- see that?

2 A Yes, I do.

3 Q Okay. So the second sentence there says (as
4 read):

5 "It is also important to note that the 12:46:18
6 effects of male-to-female hormone
7 treatment on the important
8 determinants of athletic performance
9 remain largely unknown."

10 Did I read that right? 12:46:26

11 A Yes, you did.

12 Q Okay. Do you still agree with that statement?

13 A Yes, I still agree with that statement.

14 Q And so you think it's important to note that
15 the effects remain largely unknown; correct? 12:46:36

16 MR. FRAMPTON: Objection; form.

17 THE WITNESS: Yes. Prior to allowing
18 biological males to compete in female sports, we should
19 have a better understanding of how that process would
20 influence competition. 12:46:52

21 BY MR. BLOCK:

22 Q Okay. So in your expert report, do you ever
23 note that the effects of male to female hormone
24 treatment on important determinants of athletic
25 performance advantage remain largely unknown? 12:47:05

Page 165

1 A I could look and see, but I think I say --
2 state something in my conclusion where there are still
3 a lot of variables that have not been measured.

4 BY MR. BLOCK:

5 Q Okay. In this paragraph that I was reading 12:47:20
6 from, I'm just going to go into the next one. It says
7 (as read):

8 "Measurements of VO2max in transwomen
9 using direct or indirect calorimetry
10 are not available." 12:47:35

11 Did I read that right, even if I didn't
12 pronounce it correctly?

13 A Yes.

14 Q Okay.

15 A "Calorimetry" is how I say it because it kind 12:47:41
16 of flows when you say it fast.

17 Q Okay. That makes sense.

18 Do you ever note in your expert report that
19 measurements of VO2 max in trans women using direct or
20 indirect calorimetry are not available? 12:47:59

21 A Once again, I would need to refer back to my
22 report in the conclusions to see if I had included that
23 in there.

24 Q Do you think it would make sense to have
25 included that in there? 12:48:16

Page 166

1 MR. FRAMPTON: Objection; form.

2 THE WITNESS: Yes, I think it would make sense
3 to include that in there, but it also -- like I said, I
4 cannot recall if I did or did not.

5 BY MR. BLOCK: 12:48:33

6 Q Okay. Well, let's -- well, let's look at your
7 report on -- so if you begin on page 39 of your report.

8 A All right.

9 Q All right. So this is -- Roman numeral V says
10 (as read): 12:49:04

11 "The available evidence shows that
12 suppression of testosterone in a male
13 after puberty has occurred does not
14 substantially eliminate the male
15 athletic advantage." 12:49:14

16 Right? That -- that's what section Roman
17 numeral V says; correct?

18 A That is correct.

19 Q Okay. And then subsection A on that page
20 talks about (as read): 12:49:25

21 "Empirical studies find that males
22 retain a strong performance advantage
23 even after lengthy testosterone
24 suppression."

25 Correct? 12:49:31

Page 167

1 A Correct.

2 Q All right. Then on 40, there's a subsection
3 that says, "Hand Grip Strength."

4 A Okay.

5 Q Okay. And if you -- apologies. You know, 12:49:38
6 I -- I should have directed you to page 46,
7 subsection B of that. So if you can just skip ahead to
8 46.

9 A Okay. Page 46.

10 Q Great. Thank you. 12:50:00

11 So subsection B says (as read):

12 "Testosterone suppression does not
13 reverse important male physiological
14 advantages."

15 Right? 12:50:09

16 A Yes.

17 Q Okay. And then if you turn the page, on 47,
18 at the -- page 47, at the bottom, there's a little
19 discussion on cardiovascular advantages; right?

20 A Yes. 12:50:20

21 Q All right. And where would VO2 -- where would
22 the discussion of VO2 max go? Would that be in the
23 "Cardiovascular Advantage" section or in a different
24 subsection of this discussion?

25 MR. FRAMPTON: Object to the form. 12:50:40

Page 168

1 THE WITNESS: It would probably belong in the
2 cardiovascular advantages.

3 BY MR. BLOCK:

4 Q Okay. So do you see, just in this subsection,
5 a discussion of the fact that measurements of VO2 max in 12:50:51
6 trans women using direct or indirect calorimetry are
7 not available?

8 A I have not directly made that statement.

9 Q Okay. And if -- toggling back over to -- to
10 Exhibit 73, your blog post, after that statement I just 12:51:17
11 read, you say (as read):

12 "Measurements of muscle strength in
13 standard lifts (e.g. bench press, leg
14 press, squat, deadlift, etc.) in
15 transwomen are not available." 12:51:29

16 Is that correct?

17 A That is correct.

18 Q All right. Do you disclose that information
19 in your expert report?

20 MR. FRAMPTON: Objection to the form. 12:51:39

21 THE WITNESS: In my expert report, I talk
22 about the measurements of strength that have been
23 conducted.

24 BY MR. BLOCK:

25 Q But you do not discuss the measurements of 12:51:52

Page 169

1 strength that have not been conducted; correct?

2 MR. FRAMPTON: Objection to the form.

3 THE WITNESS: I'm scrolling up to see if I
4 have some statement in there about, you know, specific
5 measurements. 12:52:13

6 Here again, no, I do not specifically state
7 that those measurements have not been conducted.

8 BY MR. BLOCK:

9 Q Okay. And then in the next sentence of the
10 blog post, you say (as read): 12:52:27

11 "Nor have there been evaluations of
12 the effects of male-to-female hormone
13 therapy on agility, flexibility, or
14 reaction time."

15 Is that right? 12:52:37

16 A That is correct.

17 Q Okay. And you do not, in your report, say
18 anything about whether -- about the effects of hormone
19 therapy on agility, flexibility or reaction time, do
20 you? 12:52:55

21 MR. FRAMPTON: Objection to the form.

22 THE WITNESS: On page 39, I state that only a
23 limited number of studies have directly measured the
24 effect of testosterone suppression and the
25 administration of female hormones on the athletic 12:53:05

Page 170

1 performance of males. And so then I go through those
2 studies which, you know, by default, then says those
3 other things have not been studied.

4 BY MR. BLOCK:

5 Q Okay. But you do discuss agility, flexibility 12:53:18
6 and reaction time when you're discussing the advantages
7 of cisgender men over cisgender women; right?

8 A Yes.

9 Q Okay. But then you don't have -- well, let me
10 just read the next part of the -- the blog post. (As 12:53:39
11 read):

12 "There has been no controlled research
13 evaluating how male-to-female hormone
14 treatment influences the adaptations
15 to aerobic or resistance training." 12:53:50

16 Is that correct?

17 A That is correct.

18 Q And again, that's not something you mention in
19 your report; correct?

20 MR. FRAMPTON: Objection to the form. 12:54:01

21 THE WITNESS: It is indirectly stated with my
22 statement about limited number of studies.

23 BY MR. BLOCK:

24 Q Okay. And then the final sentence in that
25 paragraph is (as read): 12:54:10

Page 171

1 "And there are only anecdotal reports
2 of the competitive athletic
3 performance of transwomen before and
4 after using male-to-female hormone
5 treatment." 12:54:20

6 Is that right?

7 A That is correct.

8 Q Okay. So it's fair to say that when you
9 discuss Cecé Telfer in your report, that's an example
10 of one of the anecdotal reports you refer to in this 12:54:31
11 sentence; correct?

12 A That's correct.

13 Q Okay. So the discussion of Cecé Telfer and
14 Lia Thomas and Andraya Yearwood and Terry Miller, those
15 are, to use your words from the blog post, quote, only 12:54:56
16 anecdotal reports; correct?

17 MR. FRAMPTON: Objection to the form.

18 Go ahead.

19 THE WITNESS: If I may state, in my
20 declaration, I do cite a prepublished study by 12:55:12
21 Michael Joyner that is evaluating -- or, sorry,
22 Senefeld and Joyner that is evaluating Lia Thomas.

23 But yes, those -- those would primarily be
24 anecdotal reports.

25 ///

1 BY MR. BLOCK:

2 Q Okay. If you go to the second sentence in the
3 final paragraph, you say, (as read):

4 In the end, whether it is safe and
5 fair to include transgender athletes 12:55:46
6 and athletes with DSD in women's
7 sports comes down to a -- to a few
8 facts that can be extrapolated, lots
9 of opinions, and an interesting but
10 complicated discussion. 12:55:57

11 Did I read that right?

12 A I'm sorry, where were you reading that from?

13 Q Yeah, it's the -- it's the second sentence in
14 the last paragraph of your blog post.

15 A Okay. There. 12:56:12

16 Q Okay. I'll read it again. (As read):

17 In the end, whether it is safe and
18 fair to include transgender athletes
19 and athletes with DSD in women's
20 sports comes down to a few facts that 12:56:21
21 can be extrapolated, lots of opinions,
22 and an interesting but complicated
23 discussion.

24 Is that right?

25 A That is correct. 12:56:31

Page 173

1 Q And you still agree with that statement?

2 A Yes.

3 Q Okay. What do you -- what do you mean by
4 "interesting but complicated discussion"?

5 A Well, as I was writing this for fellow 12:56:43
6 educators, this could be a very complicated discussion
7 because of -- this could be a very heated topic.

8 Q Okay. So when you say that there -- "a few
9 facts that can be extrapolated, lots of opinions, and
10 an interesting but complicated discussion," were you 12:57:09
11 referring at all to the underlying substance being
12 interesting but complicated?

13 MR. FRAMPTON: Objection to the form.

14 THE WITNESS: Yeah, I'm not sure what you mean
15 by "underlying substance." 12:57:25

16 BY MR. BLOCK:

17 Q Yeah, is the discussion of whether -- aside
18 from something being heated, is -- is the -- this topic
19 complicated?

20 MR. FRAMPTON: Objection to the form. 12:57:40

21 THE WITNESS: Yes, this is a complicated
22 topic.

23 BY MR. BLOCK:

24 Q Okay. So if we go to your report again --
25 let's see -- on page 57 of your report. 12:57:57

Page 174

1 A All right. Page 57.

2 Q So if you look just at the paragraph beginning
3 with the word "but."

4 A Okay. All right.

5 Q All right. You say -- you know, actually, 12:58:32
6 instead, let's go a few sentences above that, so in the
7 middle of the previous paragraph beginning with -- the
8 sentence beginning with "instead."

9 Do you see that?

10 A I'm sorry, which -- 12:58:49

11 Q So this is about five -- five lines from the
12 top.

13 A Okay. Yes. It says, "Instead, the IOC"?

14 Q Yeah. So this says --

15 A Okay. 12:58:58

16 Q -- (as read):

17 Instead, the IOC calls on other
18 sporting bodies to define criteria for
19 transgender inclusion, while demanding
20 that such criteria simultaneously 12:59:05
21 ensure fairness, safety, and inclusion
22 for all. The recent -- recently
23 updated NCAA policy on transgender
24 participation also relies on other
25 sporting bodies to establish criteria 12:59:19

Page 175

1 for transgender inclusion while
2 calling for fair competition and
3 safety.

4 But what we currently know tells us
5 that these policy goals—fairness, 12:59:28
6 safety, and full transgender
7 inclusion—are irreconcilable for many
8 or most sports.

9 Did I read those sentences correctly?

10 A Yes, you did. 12:59:40

11 Q Okay. How come -- why, in your blog post, did
12 you not say that the goals of fairness, safety and full
13 transgender inclusion are irreconcilable?

14 MR. FRAMPTON: Objection to the form.

15 THE WITNESS: The purpose of the blog post was 12:59:58
16 to stimulate discussions in classroom while providing a
17 little bit of guidance, but not advocate for a specific
18 position within a classroom.

19 BY MR. BLOCK:

20 Q Why didn't you say in your expert report that 01:00:13
21 whether it is safe and fair to include transgender
22 athletes and athletes with DSD in women's sports comes
23 down to a few facts that can be extrapolated, lots of
24 opinions, in an interesting but complicated discuss?

25 MR. FRAMPTON: Objection to the form. 01:00:28

Page 176

1 THE WITNESS: I think that a reasonable person
2 would come to those conclusions after reading all --
3 how many pages of my report?

4 BY MR. BLOCK:

5 Q Okay. So it's your expert testimony that 01:00:39
6 whether it is safe and fair to include trans girls and
7 women on girls and women's sports teams comes down to a
8 few facts that can be extrapolated, lots of opinions
9 and an interesting but complicated discussion?

10 MR. FRAMPTON: Object to the form. 01:01:01

11 THE WITNESS: Yes, I will stand by that
12 statement in my blog post.

13 MR. BLOCK: Okay. Great.

14 So I'm going to now ask a few questions about
15 your other, you know -- your other publication or 01:01:17
16 submission on this topic. Let me just move it into the
17 actual exhibits.

18 Let's see. So I -- this is a PowerPoint
19 document. It's going to be marked as Exhibit 74, although
20 I am not sure that it is actually going to work, 01:02:07
21 showing up, so please let me know if it actually shows
22 up for you.

23 (Exhibit 74 was marked for identification
24 by the court reporter and is attached hereto.)

25 THE WITNESS: All right. I see Exhibit 074. 01:02:21

Page 177

1 MR. BLOCK: Okay. And I think we're going to
2 need some assistance in how -- how do we zoom in again,
3 Concierge?

4 MS. DUPHILY: You just hold your mouse over
5 the bottom of the image, and you'll see the positive 01:02:37
6 and negative-looking glasses at the bottom, and you
7 can -- there's a menu.

8 Do you see that?

9 MR. BLOCK: Mouse over the image?

10 MS. DUPHILY: You want to click on it when 01:02:54
11 you're --

12 MR. BLOCK: All right.

13 MS. DUPHILY: Did you do it?

14 MR. FRAMPTON: With the witness, we're not
15 getting that. 01:03:03

16 MS. DUPHILY: Hold on a minute. Let me see.

17 MR. TRYON: Yeah, this is Dave Tryon. I've
18 seen that on other exhibits, but this one, it's not
19 showing up for me.

20 MR. BLOCK: If you're able to download a 01:03:19
21 copy --

22 MS. DUPHILY: Yeah, you're probably better off
23 downloading this because it's a PowerPoint.

24 BY MR. BLOCK:

25 Q Have you been able to download it, Dr. Brown? 01:04:02

1 A It appears that my computer is trying to
2 update PowerPoint at this very moment.

3	Q	Okay.
---	---	-------

4 MR. BLOCK: So why don't we -- can we go off
5 the record, please?

01:04:12

6 MR. FRAMPTON: It looks like it's nearly --

7 THE VIDEOGRAPHER: We are off the record at
8 1:04 p.m.

9	(Recess.)
---	-----------

10	THE VIDEOGRAPHER: We are on the record at	01:05:37
11	1:05 p.m.	

12 MR. BLOCK: Thanks.

13 BY MR. BLOCK:

14 Q So is this a presentation that you authored,
15 Dr. Brown?

01:05:51

16	A Yes, it is.
----	---------------

17 Q And the title of this presentation is
18 "Transwomen Competing in Women's Sports: What We Know,
19 and What We Don't"; is that right?

20	A That is correct.	01:06:01
----	--------------------	----------

21 Q Okay. And what conference did you submit this
22 presentation to?

23 A This was the American Physiological Society
24 Sex and Gender conference, if I remember the title
25 correctly.

01:06:18

Page 179

1 Q Yeah. If I -- if I said it was called "The
2 New Trends in Sex and Gender Medicine" conference, does
3 that sound accurate to you?

4 A Yes.

5 Q Okay. And am I right that the conference took 01:06:28
6 place from October 19th to October 22nd?

7 A That sounds correct.

8 Q Okay. Did you attend any meetings or panel
9 discussions as part of this conference?

10 A So this was a virtual conference for everyone. 01:06:42

11 Q Uh-huh.

12 A And so, yes, I sat in on discussions and panel
13 discussions and presentations and such.

14 Q Okay. Did you sit in on the panel discussion
15 at this conference titled "New Trends in Transgender 01:07:05
16 Medicine"?

17 A I honestly can't remember if I sat in and
18 attended that or not.

19 Q Okay. You have no recollection one way or the
20 other? 01:07:18

21 A Yeah, I -- there was a lot of meetings, a lot
22 of presentations and a lot of discussions, so I can't
23 say exactly which ones I was in and which ones I was
24 not.

25 Q Do you think it would have been informative to 01:07:32

Page 180

1 attend that presentation?

2 A Yes.

3 MR. FRAMPTON: Objection to the form.

4 THE WITNESS: Sorry.

5 MR. FRAMPTON: Go ahead. 01:07:39

6 BY MR. BLOCK:

7 Q You can answer.

8 A Yes, it -- it would have been informative.

9 Q Okay. And do you think it would have been at
10 least as relevant to your research as Ben Shapiro? 01:07:49

11 MR. FRAMPTON: Object to the form.

12 THE WITNESS: It's possible that I had a
13 conflicting obligation that made it so I'm not able to
14 attend. Again, I know that I did with all of them, I
15 wasn't able to attend every single session I wanted 01:08:04
16 because of other obligations.

17 BY MR. BLOCK:

18 Q I see. But -- but my question is, would -- it
19 would be a more reliable source of information than
20 Ben Shapiro, was my question. 01:08:19

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: I guess that would depend on
23 what we're asking, Ben Shapiro is -- is speaking about
24 and where he is citing his sources versus what is being
25 discussed in that discussion. 01:08:37

Page 181

1 BY MR. BLOCK:

2 Q Okay. Now, would -- would this
3 presentation quali- -- would -- could this be
4 prescribed as a poster presentation?

5 A Yes. 01:08:51

6 Q Okay. Does your CV identify it as a poster
7 presentation?

8 A I don't think my CV discriminates on my
9 various academic presentations, as to what format they
10 were presented in. 01:09:06

11 Q Okay. So it's not your regular practice to
12 denote whether a presentation is specifically a poster
13 presentation?

14 A That is correct.

15 Q Okay. All right. What was the review process 01:09:13
16 for submitting this?

17 A So I -- I was encouraged by an editor from the
18 American Journal of Physiology to submit to this, after
19 having read my blog post. I submitted it, paid the
20 abstract submission fee, like any other professional 01:09:34
21 conference, and awaited for acceptance of the abstract.

22 Q And what -- were there edits to the abstract
23 sent back to you?

24 A No. They don't edit the abstracts.

25 Q Okay. All right. 01:09:47

Page 182

1 If you go to the bottom right-hand corner of
2 this presentation, there's a box titled "What we don't
3 know"; right?

4 A Correct.

5 Q Okay. And then -- and this box says, "What We 01:10:09
6 Don't Know," and then the first bullet is "No
7 controlled training studies with male-to-female hormone
8 use"; correct?

9 A Correct.

10 Q Okay. And -- and again, as we discussed 01:10:20
11 before, that -- that statement is not in your expert
12 report; right?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: That statement is not verbatim
15 in my expert report. 01:10:36

16 BY MR. BLOCK:

17 Q And then the second bullet point is "No
18 measurements of changes in VO2max, running economy,
19 lactate threshold, anaerobic power (e.g. Wingate test),
20 vertical jump, 1-Repetition Maximum (e.g. bench press, 01:10:47
21 leg press, squat, deadlift), or many other common
22 determinants of athletic performance"; correct?

23 A That is correct.

24 Q And that information in that bullet point is
25 not included in your expert report; correct? 01:11:05

Page 183

1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: Again, in my expert report, I
3 state that there is limited evaluation. I don't make
4 that statement exactly.

5 BY MR. BLOCK: 01:11:17

6 Q Okay. How come this poster presentation
7 doesn't say that the policy goals of fairness, safety
8 and full transgender inclusion are irreconcilable for
9 many or most sports?

10 MR. FRAMPTON: Object to the form. 01:11:28

11 THE WITNESS: This poster was put together and
12 presented before the recent IOC or NCAA adjustments,
13 stating that that was a requirement. And again, the
14 poster is summarizing the science of what we know and
15 what we do not know. 01:11:48

16 BY MR. BLOCK:

17 Q So would you feel comfortable making the
18 statement to a -- a peer-reviewed publication that the
19 policy goals of fairness, safety and full transgender
20 inclusion are irreconcilable? 01:12:05

21 A Yes, I would feel very comfortable saying that
22 in a peer-reviewed pol- -- publication or presentation.

23 Q Can you tell me your understanding of what
24 this case is about?

25 MR. FRAMPTON: Object to the form. 01:12:31

Page 184

1 Go ahead.

2 THE WITNESS: So the State of West Virginia,
3 like about currently 11 other states, if I recall,
4 passed a law to limit participation in women's sports
5 to biological women. 01:12:43

6 In this case, a young trans girl has retained
7 some lawyers and filed a lawsuit asking to be able to
8 participate in girls sports.

9 The judge has given an injunction specifically
10 for the plaintiff, but not halting the law overall. 01:13:05

11 BY MR. BLOCK:

12 Q And do you -- so the -- the plaintiff's name
13 is -- is Becky.

14 Do you oppo- -- do you think Becky should not
15 be allowed to participate on her middle school 01:13:23
16 cross-country team?

17 MR. FRAMPTON: Object to the form and scope.

18 THE WITNESS: So my understanding is the
19 plaintiff is biologically male, so a trans girl, who
20 wants to compete on girls sports. 01:13:39

21 BY MR. BLOCK:

22 Q Yes. And -- and so what's the answer to my
23 question?

24 A So --

25 MR. FRAMPTON: Same objections. 01:13:54

Page 185

1 THE WITNESS: So if we were to follow the law,
2 then the plaintiff should not be participating in
3 girls' sports.

4 BY MR. BLOCK:

5 Q Yeah, but it's your -- is it your expert 01:14:01
6 opinions that Becky should not be participating in the
7 girls' cross-country team at her middle school?

8 MR. FRAMPTON: Objection; form and scope.

9 THE WITNESS: So my expert statement, expert
10 declaration, is not meant to make judgments on an 01:14:17
11 individual basis, but overall policy and law.

12 BY MR. BLOCK:

13 Q Okay. Well, so you -- you made a distinction
14 between the fact that the injunction is -- applies only
15 to Becky and not to the -- the statute on its face, and 01:14:31
16 so I'm just trying to figure out whether your expert
17 opinion is only about other applications of the statute
18 to people beyond Becky or whether you are also offering
19 expert testimony with respect to the specific issue of
20 Becky's as-applied challenge. 01:14:51

21 MR. FRAMPTON: Objection; form and scope.

22 THE WITNESS: I've not made any statements
23 that I'm aware of specific to an individual plaintiff
24 in this case or -- I don't think in any of the cases.

25 ///

1 BY MR. BLOCK:

2 Q Okay. So you're not offering an expert
3 opinions in this case with regard to whether Becky, as
4 an individual, should be allowed to participate on her
5 girl's cross-country team in middle school? 01:15:22

6 MR. FRAMPTON: Objection; form and scope.

7 THE WITNESS: I'm offering an expert opinion
8 based on what the science says and what we know overall
9 regarding differences between males and females and how
10 those differences are affected by transgender hormone 01:15:37
11 use.

12 BY MR. BLOCK:

13 Q Okay. And are you offering any opinion on
14 whether Becky, as an individual, has any athletic
15 advantages compared to cisgender girls? 01:15:52

16 MR. FRAMPTON: Objection; form and scope.

17 THE WITNESS: I'm not making statements
18 specific to Becky. I am talking about boys and girls
19 overall.

20 BY MR. BLOCK: 01:16:07

21 Q Okay. And it's possible that Becky, as an
22 individual, as opposed to people with a male sex
23 assigned at birth overall -- let me just rephrase that.

24 It's possible that Becky, as an individual,
25 may not have any athletic advantages compared with 01:16:21

Page 187

1 cisgender girls; right?

2 MR. FRAMPTON: Object to the form and scope.

3 THE WITNESS: Based on the information I have
4 read, the information cited in my expert report, if we
5 are comparing the plaintiff to a similarly aged trained 01:16:34
6 and gifted girl, the plaintiff, as a biological male,
7 will have athletic advantages.

8 BY MR. BLOCK:

9 Q Well, that -- that raises questions for me.

10 I -- I -- I guess my understanding of your 01:16:49
11 report was that you were discussing average group-based
12 differences between males and females; right?

13 A If you look at my --

14 MR. FRAMPTON: Objection; form.

15 Go ahead. 01:17:01

16 THE WITNESS: If you look at my report, I -- I
17 provide information on individuals in the 10th
18 percentile, individuals in the 50th percentile,
19 individuals in the 90th percentile, and state multiple
20 times if we compare equally trained, gifted and 01:17:14
21 talented same-age individuals, the males have an
22 advantage.

23 BY MR. BLOCK:

24 Q Well, what do you mean by "gifted"?

25 A There are many gifts that could help a person 01:17:25

Page 188

1 be a better athlete than others, whether --

2 Q So --

3 A -- whether it is something biological, whether
4 that is something with family support.

5 Q Okay. But -- so when -- when you're 01:17:43

6 discussing the physiological characteristics that, on
7 average, make cisgender boys have better outcomes in
8 athletic performance than cisgender girls, you're not
9 saying that every single cisgender boy has

10 physiological characteristics that make -- that give 01:18:03
11 them an advantage over the average cisgender girl of
12 the same age and training, are you?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: When we look at the data, if you
15 compare comparably gifted aged and trained males and 01:18:24
16 females, the males have an advantage.

17 BY MR. BLOCK:

18 Q Yeah, but you're -- you're smuggling in the
19 word "gifted" here, and you're including these
20 physiological characteristics as meaning gifted, it 01:18:34
21 sounds like.

22 I'm trying to isolate your testimony about
23 physiological advantages, okay?

24 And so it's possible there's -- there's plenty
25 of boys that are shorter than girls; right? 01:18:46

Page 189

1 A Yes, there are some boys that are shorter than
2 some girls.

3 Q Yes. So not -- not every -- and there are
4 some boys that are shorter than the average girl of the
5 same age; correct?

01:19:04

6 A Yes, there are some boys that are shorter than
7 the average girl.

8 Q Okay. So not -- not every -- so even if
9 males, on average, are taller than females, on average,
10 not every male is gifted with greater height than the 01:19:18
11 average girl of the same age; right?

12 A 50 percent of men are taller than 90 percent
13 of women.

14 Q Yeah. And I know you're -- you're -- you're
15 making a statement, though, that that doesn't answer my 01:19:38
16 question. And so I'm taking that as -- is the answer
17 to my question "correct"?

18 A Could you restate the question, please?

19 Q Yes. Not every boy is taller than the average
20 cisgender woman; right? 01:19:54

21 Let me switch from boys to gir- -- to a woman.

22 Not every cisgender boy is taller than the
23 average cisgender girl of the same age; correct?

24 A If I can -- I'm -- I'm just a little confused

25 here because you are comparing an absolute of every boy 01:20:13

Page 190

1 with average.

2 Q Yes, I -- I -- I am. I -- I'm saying that it
3 is entirely possible that there's an individual that is
4 not taller than the -- an individual who is a boy that
5 is not taller than the average girl, the mean -- or the 01:20:31
6 mean height of girls of the same age; right?

7 A Yes. So if you look at the distribution
8 curves for body height, boys on the shorter end of the
9 distribution curve may be shorter than girls in the
10 average of the distribution curve. 01:20:47

11 Q And -- and the same is true for speed; right?

12 A If I may, I would actually like to refer back
13 to the graphs by Gabe Higgard so we could look and see
14 where the slowest boys are relative to the
15 50th percentile for the girls in those competitions. 01:21:09

16 Q Okay. We can -- so we -- I appreciate that.
17 We can refer back to that later.

18 Are -- are you familiar at all with Becky's
19 athletic performance?

20 A No. I know nothing of Becky's athletic 01:21:26
21 performance.

22 Q Okay. And you -- as we said before, you are
23 not providing expert testimony about her as an
24 individual; correct?

25 A Right. I'm providing testimony on overall 01:21:41

Page 191

1 what we would see if we compare equal, as much as
2 possible, males to females.

3 Q And is it your understanding of -- of this law
4 that it prevents girls who are transgender from
5 participating on the same sports teams as cisgender 01:22:06
6 girls?

7 MR. FRAMPTON: Object to the form and scope.

8 THE WITNESS: My understanding is, yes, this
9 states that people should participate in sports
10 based -- based on their biological sex. 01:22:21

11 BY MR. BLOCK:

12 Q Right. And, therefore, transgender girls
13 should not be allowed to participate on the same sports
14 team as cisgender girls; correct?

15 MR. FRAMPTON: Same objection. 01:22:32

16 THE WITNESS: Just going to rephrase that.

17 So trans girls should not be competing with
18 cis girls, yes.

19 BY MR. BLOCK:

20 Q Okay. Thank you. 01:22:40

21 And you think H.B. 3293 -- well, let me say,
22 do you know what I'm talking about when I refer to
23 H.B. 3293?

24 A I know we're talking about H.B. I don't
25 remember the number. I will assume that it is the law 01:22:57

1 in West Virginia.

2 Q Okay. Great.

3 You think H.B. 3293 is justified by science;
4 right?

5 MR. FRAMPTON: Object to the form and scope. 01:23:06

6 THE WITNESS: Yes, I do.

7 BY MR. BLOCK:

8 Q Okay. And you think it's justified by science
9 even though it applies to trans girls who, as a result
10 of puberty blockers and gender-affirming hormones, 01:23:23
11 never go through endogenous puberty; right?

12 MR. FRAMPTON: Same objections.

13 THE WITNESS: Yes.

14 BY MR. BLOCK:

15 Q And you think H.B. 3293 is justified by 01:23:29
16 science even though it applies to trans girls and women
17 who go through endogenous puberty and then take
18 medication to lower their levels of circulating
19 testosterone; right?

20 MR. FRAMPTON: Same objections. 01:23:43

21 THE WITNESS: Yes.

22 BY MR. BLOCK:

23 Q Okay. And you think H.B. 3293 is justified by
24 science even though it applies the same categorical
25 rule to all sex-separated sports instead of creating 01:23:50

Page 193

1 different standards for different sports; is that
2 right?

3 MR. FRAMPTON: Same objections.

4 THE WITNESS: Yes.

5 BY MR. BLOCK: 01:24:01

6 Q Okay. I would like to direct your attention
7 to paragraph 8 of your report. Let me know when you're
8 there.

9 A It is on page 7, under item II, "Biological
10 men"? 01:24:29

11 Q Yes.

12 A Okay.

13 Q Okay. Make sure I'm there myself.

14 Okay. So I'm just going to read this to you,
15 beginning with the second sentence. (As read): 01:24:44

16 "I cited many" --

17 Actually, I'll begin with the first sentence.
18 Sorry.

19 You say (as read):

20 "Nevertheless, these differences have 01:24:52

21 been extensively studied and measured.

22 I cited many of these studies in the

23 first paper on this topic that I

24 prepared, which was submitted in

25 litigation in January 2020. 01:25:03

Page 194

1 Since then, in light of current
2 controversies, several authors have
3 compiled valuable collections or
4 reviews of data extensively
5 documenting this objective fact about 01:25:11
6 the human species, as manifest in
7 almost all sports, each of which I
8 have reviewed and found informative.

9 Did I read that correctly so far?

10 A Yes, you did. 01:25:23

11 Q Okay. Thanks.

12 And you say (as read):

13 "These include Coleman (2020), Hilton
14 & Lundberg (2021), World Rugby (2020),
15 Harper (2021), Hamilton (2021), and a 01:25:36
16 'Briefing Book' prepared by the
17 Women's Sports Policy Working Group
18 (2021).

19 Did I read that right?

20 A Yes. 01:25:46

21 Q Okay. And if you -- if you could look at
22 the -- that list that you gave, and I'd like you to --
23 to tell me -- and I -- and I will write it down --
24 which of those sources support excluding transgender
25 girls and women from sports if they have had puberty 01:26:08

Page 195

1 blockers and gender-affirming hormones and, as a
2 result, have not gone through endogenous puberty.

3 MR. FRAMPTON: Object to the form.

4 THE WITNESS: Can you please rephrase that

5 question? It was just kind of long. 01:26:21

6 BY MR. BLOCK:

7 Q Yeah, sure.

8 So I -- I'm talking about trans girls who have
9 been on puberty blockers and, as a result, not
10 experienced endogenous puberty. 01:26:33

11 Which of the sources identified in paragraph 8
12 support excluding those trans girls who are on puberty
13 blockers from participating in girls and women's
14 sports?

15 MR. FRAMPTON: Object to the form. 01:26:47

16 THE WITNESS: I cannot recall right now which
17 or if any of those papers discuss specifically puberty
18 blockers.

19 BY MR. BLOCK:

20 Q Okay. So -- so you can't recall whether any 01:26:58
21 of those papers discuss puberty blockers at all. Is
22 that what you're saying?

23 A I'm saying I cannot recall if they advocate
24 for preventing people who have used puberty blockers
25 from participating in girls' sports. 01:27:15

Page 196

1 Q Okay. Can you recall if any of them advocate
2 in favor of allowing girls who use puberty blockers to
3 participate in girls and women's sports?

4 A Well, as we discussed earlier, the Women's
5 Sports Policy Working Group has a statement about that, 01:27:37
6 and I think World Rugby has a statement about that.

7 Q Okay. Any others?

8 A I can't recall from the others.

9 Q Okay. So just in terms of what you can
10 recall, at least two of them advocate in favor of 01:27:52
11 allowing trans girls on puberty blockers to participate
12 and you can't recall if any of the others support
13 excluding girls who are transgender?

14 MR. TRYON: Objection.

15 MR. FRAMPTON: Same objection. Form. 01:28:17

16 THE WITNESS: So I can't recall specifically.
17 I think Hilton and Lundberg have some mention on that
18 topic, but again, I can't recall without referring back
19 to the paper to look.

20 BY MR. BLOCK: 01:28:28

21 Q Okay. And so which of the sources cited in
22 this paragraph advocate in favor of excluding trans
23 girls and women who go through puberty and then
24 suppress testosterone?

25 MR. FRAMPTON: Objection; form. 01:28:46

Page 197

1 Go ahead.

2 THE WITNESS: I think that is Hilton and
3 Lundberg and World Rugby and Harper and Hamilton and
4 the Women's Sports Policy Working Group.

5 BY MR. BLOCK: 01:28:55

6 Q Okay. So it's Hilton and Lundberg and Harper
7 and World Rugby and Women's Sports Policy Working
8 Group?

9 A And, I think, Hamilton.

10 Q Okay. You think that those five sources 01:29:12
11 advocate in favor of excluding transgender girls and
12 women from participating on girls and women's sports
13 team if they have gone through endogenous puberty and
14 then lowered their levels of circulating testosterone?

15 MR. FRAMPTON: Object to the form. 01:29:36

16 THE WITNESS: Yes, I think those all indicate
17 that women deserve to compete in a protected category.

18 BY MR. BLOCK:

19 Q Okay. And then which of the sources cited in
20 paragraph 8 advocate in favor of having a categorical 01:29:49
21 rule that apply to all sports instead of
22 differentiating based on what sport is at issue?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: So World Rugby is speaking
25 specifically about rugby; and, therefore, I would not 01:30:14

Page 198

1 expect it to talk too much about other sports.

2 If I recall correctly, Hamilton states
3 specifically that women deserve to compete in a
4 protected category, which implies all sports.

5 Hilton and Lundberg advocate for sex 01:30:31
6 segregation of sports, and, as far as I know, it's for
7 all sports.

8 And Harper indicates that trans women have a
9 retained athletic advantage compared to cisgender
10 women. 01:30:45

11 BY MR. BLOCK:

12 Q And so just to clarify, my question isn't
13 whether or not there should be separation in those --
14 in all sports; the question is whether or not there
15 should be the same rules for excluding transgender 01:30:58
16 girls and women in all sports.

17 MR. FRAMPTON: Objection; form.

18 THE WITNESS: I guess you'll need to rephrase
19 the question because I thought I answered it.

20 BY MR. BLOCK: 01:31:17

21 Q Yeah. So IOC used to have a single standard
22 that applied to all sports. They then changed their
23 policy so that individual standards could be crafted
24 for different sports.

25 H.B. 3293 has a single standard that applies 01:31:30

Page 199

1 to all sports.

2 My question is which of the sources support
3 having a single standard that applies to all sports
4 instead of having individual standards crafted to
5 different sports.

01:31:46

6 MR. FRAMPTON: Objection to the form.

7 THE WITNESS: I would need to review each of
8 them to be specific and certain. So going off of
9 memory, Hilton and Lundberg, Hamilton, Women's
10 Sport (sic) Policy Working Group, again, as I recall,
11 without looking at them specifically, state that it
12 should be categorical women's sports and men's sports.

01:32:05

13 MR. BLOCK: Okay. Can we go off the record
14 for a second?

15 MR. FRAMPTON: Sure.

01:32:19

16 THE VIDEOGRAPHER: We are off the record at
17 1:32 p.m.

18 (Recess.)

19 THE VIDEOGRAPHER: We are on the record at
20 2:08 p.m.

02:08:00

21 BY MR. BLOCK:

22 Q Good afternoon, Dr. Brown.

23 A Mr. Block, how are you doing?

24 Q I -- I'm good.

25 Okay. So, you know, we -- just before the

02:08:12

Page 200

1 break, we had just a series of questions about some of
2 the sources quoted in your report, and I'm trying to
3 just pull back, again, the -- the paragraph where this
4 was discussed.

5 This is paragraph 8, page 7, from your expert 02:08:32
6 report, you know, marked Exhibit 64.

7 A Yes.

8 Q And, you know, we -- we had a series of
9 questions about them. And if you recall, my questions
10 focused on three features of H.B. 3293. One is the 02:08:46
11 fact that it excludes trans girls and women even if
12 they've had blockers. Two is that it includes trans
13 girls and women if they've gone through puberty and
14 suppressed their testosterone. And three is that it
15 has an across-the-board rule. And I asked you a series 02:09:09
16 of questions about those elements of it, and now I'm
17 going to turn to looking at the sources cited in
18 paragraph 8, with an eye towards those elements. So
19 that's not a question for you; that's just to orient
20 you for the next couple of questions. 02:09:27

21 MR. BLOCK: So if you could look in your
22 exhibit file, Exhibit 75, that should be a PDF of
23 Coleman -- of the first Coleman article. Coleman 2020.

24 (Exhibit 75 was marked for identification
25 by the court reporter and is attached hereto.) 02:09:46

Page 201

1 THE WITNESS: Yes. By Doriane Coleman and
2 Michael Joyner and Donna L.

3 BY MR. BLOCK:

4 Q Yes. All right. So if we look at that
5 article -- if you could turn to page 130 of her 02:10:12
6 article. Let me know when you're there. It's near the
7 end.

8 A Still scrolling. Almost there.

9 All right. Page 130. Duke Journal of Gender
10 and Law Policy, Volume 27:69, 2020. 02:10:49

11 Q Yep. Okay.

12 Now, just to preface this, you know, this
13 article uses the phrase "category affirming" and
14 "category defeating."

15 Are you familiar with those terms? 02:11:01

16 A If I remember correctly, category affirming
17 applies to male and female. Is that correct?

18 Q So my understanding, which I'll represent to
19 you, is that category affirming means that the
20 participation is consistent with the purposes of having 02:11:20
21 a female category, and category defeating means
22 allowing someone to participate would sort of defeat
23 the purpose of having a female category.

24 So if -- does that ring a bell at all for you?

25 A Yes, it does. It does. 02:11:37

Page 202

1 Q Okay. So if you look at the -- the paragraph
2 beginning "In high school" --

3 A Uh-huh.

4 Q -- "In high school intramural."

5 Do you see that? 02:11:48

6 A Yes, I do.

7 Q Okay. So it says (as read):

8 "In high school intramural, junior

9 varsity, and regular season play,

10 where institutional goals are 02:11:57

11 primarily related to health and

12 fitness and to the development of

13 social skills, unconditional inclusion

14 of gender diverse students according

15 to their gender identity rather than 02:12:06

16 their sex will usually be category

17 affirming."

18 Do you see that?

19 A I do.

20 Q Okay. So that sentence indicates that it 02:12:12

21 would be consistent with the female category according

22 to Coleman 2020 to have -- to allow trans girls to

23 participate in intramural, junior varsity and regular

24 season play without any medical interventions

25 whatsoever. Do you agree? 02:12:39

Page 203

1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: I'm looking at the sentence
3 after that, however, which has some exceptions, which
4 would include invitational and postseason
5 opportunities.

02:12:53

6 BY MR. BLOCK:

7 Q Yes. Is it your understanding that H.B. 3293
8 is limited to excluding trans girls from invitational
9 and postseason opportunities?

10 MR. FRAMPTON: Object to the form.

02:13:04

11 THE WITNESS: Yes, it is my understanding that
12 the law in West Virginia states that biological females
13 only compete in female sports.

14 BY MR. BLOCK:

15 Q Right. But not just -- not just the
16 invitational and postseason opportunities of female
17 sports; right?

02:13:22

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: Yes, it is my understanding that
20 it is all parts of the sports.

02:13:31

21 BY MR. BLOCK:

22 Q Right. So the H.B. 3293 does not allow trans
23 girls to participate on girls' teams in the regular
24 season play of sports; correct?

25 MR. FRAMPTON: Object to the form.

02:13:46

Page 204

1 THE WITNESS: I will trust your interpretation
2 on that.

3 BY MR. BLOCK:

4 Q Would you support a policy of allowing trans
5 girls to participate in regular season play? 02:14:01

6 MR. FRAMPTON: Object to the form and scope.

7 THE WITNESS: Inasmuch as biological males
8 have inherent athletic advantages over biological
9 females, I think the category should be retained.

10 BY MR. BLOCK: 02:14:19

11 Q Yeah, I know. I'm -- I'm sorry, I really just
12 need like a clear answer to my questions.

13 This article draws a distinction between
14 allowing trans girls to play in regular season play
15 versus in postseason opportunities. I'm just trying to 02:14:30
16 get an answer from you about whether you agree with
17 that distinction or not. So --

18 MR. FRAMPTON: Objection to the form that
19 misstates the article.

20 MR. BLOCK: Okay. 02:14:44

21 BY MR. BLOCK:

22 Q So --

23 MR. FRAMPTON: You can go ahead and answer.

24 BY MR. BLOCK:

25 Q So do you think that trans girls should not be 02:14:45

Page 205

1 allowed to play on girls' teams for regular season
2 play?

3 MR. FRAMPTON: Object to the form.

4 Go ahead.

5 THE WITNESS: I think that whether it's 02:14:58
6 regular season, preseason, postseason, males have
7 inherent athletic advantages; therefore, we should
8 protect women's sports and men's sports.

9 BY MR. BLOCK:

10 Q So -- so that's a yes? 02:15:13

11 MR. FRAMPTON: Same objection.

12 THE WITNESS: I think you could take that as a
13 yes.

14 BY MR. BLOCK:

15 Q Thank you. 02:15:17

16 All right. Then if you go down, continuing in
17 the article, the paragraph that says -- let me find
18 this. All right. The paragraph above that begins with
19 "where combined." (As read):

20 Where combined teams or practices 02:15:44
21 coupled with sex segregated
22 competition cannot be -- cannot
23 accomplish institutional goals, the
24 accommodations approach detailed in
25 Part IIIC4 should be adopted." 02:15:55

Page 206

1 And that cross references a section that I
2 don't think we need to turn to for purposes of this
3 question, but let me know if you disagree.

4 Then the -- then the paragraph continues,
5 so -- (as read):

02:16:08

6 "This will be the case" --

7 Meaning the accommodations approach should be
8 adopted.

9 (As read):

10 -- "in circumstances where sex

02:16:14

11 segregated teams and events remain

12 necessary to secure parity of

13 opportunity for females. Where the

14 accommodations approach is adopted,

15 trans students will train and compete

02:16:24

16 consistent with their gender identity

17 so long as their inclusion can be

18 relevantly conditioned. The NCAA

19 transgender policy is illustrative of

20 a hormonal condition in this category;

02:16:38

21 others that do not require

22 medicalization-- such as handicaps,

23 offsets, and quotas-- exist as more

24 appropriate models for the high school

25 sports space.

02:16:45

Page 207

1 Do you see that?

2 A Yes, I see that.

3 Q Okay. So am I correct in saying that this
4 article points to the NCAA transgender policy as
5 illustrative of a model of allowing trans girls to 02:16:58
6 participate so long as their inclusion can be
7 relatively -- relevantly conditioned?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: And I'm unclear what they mean
10 by "relevantly conditioned," so I don't know how I can 02:17:21
11 answer that.

12 BY MR. BLOCK:

13 Q Okay. Why do you think they're citing the
14 NCAA transgender policy?

15 A This is the old NCAA policy, not the current 02:17:35
16 NCAA policy, and the old NCAA policy did have a
17 statement about testosterone suppression.

18 Q So -- and so they are citing testosterone
19 suppression as an example of an accommodations approach
20 that should be used in circumstances for sex-segregated 02:18:00
21 teams and events remain necessary to secure parity of
22 opportunity for females; right?

23 MR. TRYON: Objection.

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: And again, what -- I'm still not 02:18:19

Page 208

1 sure what you're asking me here.

2 BY MR. BLOCK:

3 Q Sure. I'm -- I'm asking, does this article
4 support a policy of -- of excluding trans girls and
5 women from all female athletic events, even if they 02:18:28
6 suppress testosterone after puberty?

7 MR. FRAMPTON: Same objection.

8 THE WITNESS: As I read it, this article is
9 kind of confusing on that.

10 MR. BLOCK: Okay. All right. I'll -- I'll 02:18:50
11 leave that article at that.

12 Let's next look at the Hilton and Lundberg
13 article, which I will cue up for you. For some reason,
14 Exhibit Share is being slow.

15 (Exhibit 76 was marked for identification 02:19:43
16 by the court reporter and is attached hereto.)

17 BY MR. BLOCK:

18 Q Okay. This should pop up on your exhibit list
19 as Exhibit 76.

20 A All right. Exhibit 076 - Hilton - Transgender 02:20:00
21 Women...?

22 Q Yes.

23 A Okay.

24 Q So, you know, we discussed this, you know,
25 as -- you -- you cited this as an exam- -- as, 02:20:12

Page 209

1 potentially, an example of an article supporting a
2 categorical rule across sports; correct?

3 A That is correct.

4 Q Okay. And you cited this, potentially, as an
5 example of an article supporting an exclusion of trans 02:20:29
6 girls and women even if they've suppressed
7 testosterone; right?

8 MR. FRAMPTON: Same -- object to the form.

9 THE WITNESS: Yes.

10 BY MR. BLOCK: 02:20:40

11 Q Okay. Great.
12 So let's look on page 211 of this article.

13 Let me know when you're there.

14 A All right. Yep, page 211.

15 Q Great. All right. Sorry. One second. 02:21:08

16 All right. If you look on the right-hand
17 column, the second -- the third sentence there, where
18 it begins, "It is also," do you see that?

19 A So page 211, right-hand column?

20 Q Second full paragraph, third sentence. 02:21:44

21 A Yes. "It is also important to recognize..."

22 Q Yeah. So that says (as read):

23 "It is also important to recognize the
24 performance in most sports may be

25 influenced by factors outside muscle 02:21:58

Page 210

1 mass and strength, and the balance
2 between inclusion, safety and fairness
3 therefore differs between sports."

4 Do you see that?

5 A Yes. 02:22:06

6 Q Okay. Does that refresh your recollection at
7 all about whether or not this article advocates for a
8 single across-the-board rule?

9 MR. FRAMPTON: Object to the form.

10 THE WITNESS: It doesn't make a clear 02:22:21
11 statement one way or the other, necessarily.

12 BY MR. BLOCK:

13 Q Okay. So let's continue reading.
14 If you go to the final full paragraph.

15 A Okay. 02:22:47

16 Q The second sentence beginning with
17 "regardless."

18 A Okay.

19 Q Okay. It says (as read):

20 "Regardless of what the future will 02:22:54

21 bring in terms of revised transgender
22 policies, it is clear that different
23 sports differ vastly in terms of
24 physiological determinants of success,
25 which may create safety considerations 02:23:05

Page 211

10	A Yes, I do.	02:23:26
----	--------------	----------

14 MR. FRAMPTON: Object to form.

17 BY MR. BLOCK:

21 MR. FRAMPTON: Same objection.

24 BY MR. BLOCK:

1 At the top of the page, on the left-hand
2 column.

3 A Okay.

4 Q Okay. The paragraph beginning -- I mean, not
5 the paragraph. The sentence beginning with the word 02:24:28
6 "however."

7 Do you see that --

8 A Yes.

9 Q -- right in the middle of that first
10 paragraph? 02:24:35

11 All right. It says (as read):

12 "However, given the plausible
13 disadvantages with testosterone
14 suppression mentioned in this section,
15 together with the more marginal male 02:24:43
16 advantage in endurance-based sports,
17 the balance between inclusion and
18 fairness is likely closer to
19 equilibrium in weight-bearing
20 endurance-based sports compared with 02:24:55
21 strength-based sports where the male
22 advantage is still substantial.

23 Do you see that?

24 A Yes, I do.

25 Q All right. So -- and feel free to read more 02:25:03

Page 213

1 of that paragraph of which this is an excerpt, but is
2 it fair to say that the authors of this article are
3 saying there is a substantial advantage for
4 strength-based sports for transgender women who
5 suppress testosterone, but when it comes to -- when it 02:25:25
6 comes to weightbearing endurance-based sports, the
7 balance between inclusion and fairness is likely closer
8 to equilibrium?

9 MR. FRAMPTON: Object to the form.

10 MR. TRYON: Objection. 02:25:45

11 THE WITNESS: I think you need to take that
12 particular statement in context of the other
13 information presented in this article in which the
14 authors clearly demonstrate a 10 to 13 percent
15 advantage in endurance performance for males compared 02:25:57
16 to females relative to the 30 to 60 percent -- I guess
17 I could look up at the table and tell you exactly the
18 percent -- that they're showing for advantage in
19 strength-based sports.

20 And then if you look at the para- -- the 02:26:10
21 sentence right above what you've quoted, they mention
22 about unknown effects on vari- -- a number of the
23 determinants of endurance performance.

24 And so I really can't say too much beyond that
25 that is kind of a speculative statement. 02:26:26

1 BY MR. BLOCK:

2 Q I see. So if you look on page 208, there's a
3 discussion about -- on the right-hand column, there's a
4 discussion about hemoglob- -- hemoglobin levels being
5 reduced with once testosterone is suppressed; correct? 02:26:48

6 A Yes. Second paragraph down, page 208, starts
7 "Circulating hemoglobin."

8 Q Right. And if you -- and then if you look at
9 the next paragraph, it also says (as read):

10 "The typical increase in body fat 02:27:07
11 noted in transgender women may also be
12 a disadvantage for sporting activities
13 (e.g. running) where body weight (or
14 fat distribution) presents a marginal
15 disadvantage." 02:27:21

16 Right?

17 A Correct.

18 Q Okay. All right. I'll leave it at that
19 article.

20 We already -- you mentioned the World Rugby 02:27:36
21 policies, and you already noted that World Rugby allows
22 girls and women -- trans girls and women to -- I guess
23 I'll start over.

24 You already mentioned that World Rugby allows
25 trans women to participate in women's rugby if they've 02:27:55

Page 215

1 had puberty blockers and, therefore, not experienced
2 endogenous puberty; right?

3 MR. FRAMPTON: Object to form.

4 Go ahead.

5 I'm sorry. I couldn't tell if you finished 02:28:11
6 the question.

7 Go --

8 MR. FRAMPTON: But objection.

9 Go ahead and answer.

10 THE WITNESS: All right. That is my 02:28:14
11 understanding of what World Rugby has stated.

12 BY MR. BLOCK:

13 Q Okay. So you don't need me to put on the
14 screen a -- a copy of the World Rugby policy to -- to
15 point out that provision, do you? 02:28:27

16 A I would ask you to put it on the screen so we
17 can evaluate if they cite any sources to make that
18 statement.

19 Q Sure. Let's put that -- let's put it on the
20 screen. One second. 02:28:40

21 MS. DUPHILY: Did you say you wanted to put
22 something on the screen or --

23 MR. BLOCK: No, I'll take -- I'll take care of
24 it. I'm just looking up which specific one I want to
25 put up. 02:29:03

Page 216

1 MS. DUPHILY: Okay.

2 (Exhibit 77 was marked for identification
3 by the court reporter and is attached hereto.)

4 BY MR. BLOCK:

5 Q All right. So this is going to pop up as 02:29:22
6 marked as Exhibit 77. Let me know when you see it.

7 A All right. Exhibit 077 - World Rugby
8 Transgender...?

9 Q Yes. All right. And you see it says, "Can
10 transgender women play rugby?" right? 02:29:58

11 A Yes.

12 Q Okay. And the first bullet point says (as
13 read):

14 "Transgender women who transitioned
15 pre-puberty and have not experienced 02:30:08
16 the biological effects of testosterone
17 during puberty and adolescence can
18 play women's rugby (subject to
19 confirmation of medical treatment and
20 the timing thereof). 02:30:18

21 Right?

22 A Yes, I see that.

23 Q Okay. The third bullet point also says (as
24 read):

25 "Transgender women can play 02:30:22

Page 217

1 mixed-gender non-contact rugby."

2 Right?

3 A Yes.

4 Q Okay. And if we -- scroll down.

5 Do you know -- do you know if World Rugby at 02:31:00
6 all talks about any advantages for -- between boys and
7 girls before puberty?

8 A I don't recall this document from World Rugby
9 evaluating differences between boys and girls
10 prepuberty. 02:31:25

11 Q Can you recall any document from World Rugby
12 evaluating that?

13 A Sitting here right now, I cannot recall that
14 World Rugby has evaluated and cited sources on
15 differences before puberty or the effect of puberty 02:31:45
16 blockers on those differences.

17 Q Okay. All right.

18 So that's -- that's World Rugby. So we can
19 put that down as not supporting a policy of excluding
20 trans girls and women from participating in girls and 02:32:04
21 women's sports if they've had puberty blockers;
22 correct?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: I think it's important that
25 that's specific to rugby. 02:32:18

Page 218

1 BY MR. BLOCK:

2 Q I -- I understand. But the -- the answer to
3 my question is correct; right?

4 MR. FRAMPTON: Object to the form.

5 THE WITNESS: Isn't that what I said? 02:32:26

6 BY MR. BLOCK:

7 Q No. You -- you've made a different statement,
8 so I -- I just -- I need you to answer my question
9 before you make a different statement.

10 So it's fair to say that -- that 02:32:35

11 World Rugby -- this World Rugby policy does not support
12 excluding trans girls and women from girls and women's
13 teams in rugby if they have been on hormone blockers
14 and not experien- -- puberty blockers and not
15 experienced endogenous puberty; correct? 02:32:58

16 MR. FRAMPTON: Object to the form.

17 THE WITNESS: Yes, that is correct, as you
18 stated, the World Rugby statement is about rugby.

19 (Exhibit 78 was marked for identification
20 by the court reporter and is attached hereto.) 02:33:10

21 BY MR. BLOCK:

22 Q Okay. All right. Now let's look at the
23 Harper 2021 article.

24 All right. This is going to appear on your
25 screen as Exhibit 78. Please let me know once you have 02:33:36

Page 219

1 it.

2 A All right. Exhibit 078 - Harper.

3 Q All right. See if I can grab -- all right.

4 So if you go to page 7. Let me know when you're there.

5 A All right. Page 7 of 9. 02:34:17

6 Q Yeah. So if you look at the first full
7 paragraph, beginning with "in contrast," do you see
8 that?

9 A Yes.

10 Q Okay. It says (as read): 02:34:35

11 "In contrast to strength-related data,

12 blood cell findings revealed a

13 different time course of change.

14 After 3-4 months on GAHT" -- which is

15 gender-affirming hormone therapy -- 02:34:48

16 "the HCT or Hgb levels of transwomen

17 matched those of cisgender women, with

18 levels remaining stable within the

19 'normal' female range for studies

20 lasting up to 36 months." 02:35:02

21 Do you see that?

22 A Yes, I do.

23 Q Okay. And then if you look at the bottom of

24 the paragraph, so that's the top of the second column,

25 it says (as read): 02:35:19

Page 220

1 "Given this, and that the changes in
2 Hgb/HCT follow a different time course
3 than strength changes, sport-specific
4 regulations for transwomen in
5 endurance versus strength sports may 02:35:30
6 be needed."

7 Do you see that?

8 A Yes, I see that.

9 Q Okay. So is this Harper article advocating
10 for a single categorical rule that doesn't distinguish 02:35:41
11 between endurance sports and strength sports?

12 MR. FRAMPTON: Object to the form.

13 THE WITNESS: That would appear to be correct.

14 BY MR. BLOCK:

15 Q Okay. Now, if you look at the bottom right, 02:35:53
16 so the last paragraph, bottom right of page 7, it says
17 (as read):

18 "Although the data we present are
19 meaningful, the effects of GAHT on
20 these parameters, or indeed athletic 02:36:15
21 performance in transgender people who
22 engage in training and competition,
23 remain unknown."

24 Do you see that?

25 A Yes. 02:36:23

Page 221

1 Q Okay. Great.

2 And then if we move down -- actually, never

3 mind. I'll come -- I'll come back to this article.

4 I -- I have one more to quote for you, and then I'll

5 come back to this article. 02:36:44

6 If you go to page 8, at the very end, the

7 second to last sentence.

8 A Is that the one that starts "Whether

9 transgender"?

10 Q Yes. It says (as read): 02:36:57

11 Whether --

12 A Okay.

13 Q (As read):

14 "Whether transgender and cisgender

15 women can engage in meaningful sport, 02:37:02

16 even after gender-affirming hormone

17 therapy, is a highly debated question.

18 However, before this question can be

19 answered with any certainty, the

20 intricacies and complexity of factors 02:37:12

21 that feed into the development of

22 high-performance athletes warrant

23 further investigation of attributes

24 beyond those assessed herein."

25 Do you see that? 02:37:23

Page 222

1 A I see that.

2 Q Okay. So do the authors of this article
3 believe that the information they present here allows a
4 policy maker to determine with any certainty whether
5 transgender and cisgender women can engage in 02:37:38
6 meaningful sport after GAHT?

7 MR. FRAMPTON: Object to the form.

8 MR. TRYON: Objection.

9 THE WITNESS: The authors state that that
10 question cannot be answered. 02:37:52

11 BY MR. BLOCK:

12 Q Okay. And you -- do you think the question
13 can be answered?

14 MR. FRAMPTON: Object to the form.

15 Go ahead. 02:38:05

16 THE WITNESS: I think that the question can be
17 answered sufficiently that we should not do away with
18 existing policies until further information
19 demonstrating the removal of biological male advantage
20 has been obtained. 02:38:18

21 BY MR. BLOCK:

22 Q Okay. Let me ask that again.

23 So the -- the -- the -- because I'm just not
24 sure it came out clearly.

25 So the authors of this article say -- I'm just 02:38:32

Page 223

1 going to read it again for the record. (As read):

2 "Whether transgender and cisgender
3 women can engage in meaningful sport,
4 even after gender-affirming hormone
5 therapy, is a highly debated question. 02:38:47

6 However, before this question can be
7 answered with any certainty, the
8 intricacies and complexity of factors
9 that feed into the development of
10 high-performance athletes warrant 02:38:56
11 further investigation of attributes
12 beyond those assessed herein."

13 Do you agree or disagree with that statement?

14 MR. FRAMPTON: Object to the form.

15 Go ahead. 02:39:08

16 THE WITNESS: So what is the question I'm
17 agreeing with or not agreeing with?

18 BY MR. BLOCK:

19 Q I -- I believe the question is that until --
20 until the intricacies and complexity of factors that 02:39:24
21 feed into the development of high-performance
22 athletes -- let me ask the question again in a -- in a
23 clearer way.

24 Do you -- the -- the question is, do you -- is
25 the information presented in this article sufficient 02:39:37

Page 224

1 for a policy maker to answer with any certainty whether
2 transgender and cisgender women can engage in
3 meaningful sport after gender-affirming hormone
4 therapy?

5 MR. FRAMPTON: Same objection. 02:39:55

6 Go ahead.

7 THE WITNESS: What is meant by "meaningful
8 sport"?

9 BY MR. BLOCK:

10 Q What -- what do you think is meant by 02:39:59
11 "meaningful sport"?

12 A I asked first.

13 Q So you can't answer the question without
14 knowing more what they mean by "meaningful sport"?

15 A Yes, I would like know what they mean more by 02:40:19
16 "meaningful sport."

17 Q Okay. Do you think that -- all right. We can
18 come back to this article later too.

19 So a question about the Hamilton article. You
20 have several times, if I'm right, referenced a 02:40:45
21 statement in the Hamilton article about how women have
22 a right to compete in a protected category; is that
23 right?

24 A Yes, I have stated that.

25 Q Okay. Is there any other portion of the 02:41:02

Page 225

1 Hamilton article that you remember?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: I remember there was a lot of

4 statements in the Hamilton article that seemed

5 confusing and contradictory. 02:41:18

6 BY MR. BLOCK:

7 Q What do you mean by "confusing and

8 contradictory"?

9 A Again, if I'm remembering the article

10 correctly, it seemed like they would make a statement 02:41:30

11 in one place about how trans women retain significant

12 advantages and then in another statement state

13 something about how those advantages wouldn't influence

14 sport performance and then come back and state that

15 those are advantages that influence sport performance. 02:41:48

16 I'm -- I'm grossly generalizing here, but that

17 was my impression because I read a lot of the article.

18 Q Okay. Which portions of the article did you

19 decide to cite in your report?

20 MR. FRAMPTON: Object to the form. 02:42:06

21 THE WITNESS: The -- if I'm remembering

22 correctly, that is a direct quote from Hamilton, that

23 cisgender women deserve to compete in a protected

24 category, and I thought that was a very clear statement

25 from that article. 02:42:22

Page 226

1 BY MR. BLOCK:

2 Q Okay. But -- but you had said before that
3 several statements in the article are contradictory;
4 right?

5 A Yes. 02:42:30

6 Q Okay. And in your report, you quoted the
7 statements that you believe support excluding trans
8 girls and women from female sports; is that right?

9 MR. FRAMPTON: Object to the form.

10 THE WITNESS: Yes, I quoted from Hamilton 02:42:56
11 those parts that -- yeah, as you said.

12 BY MR. BLOCK:

13 Q Okay. But you didn't quote any of the
14 portions of the Hamilton article that are contradictory
15 with that; right? 02:43:19

16 MR. FRAMPTON: Object to the form.

17 THE WITNESS: I didn't put quotations in there
18 that were confusing and contradictory to other
19 quotations in the article.

20 BY MR. BLOCK: 02:43:28

21 Q Well, so if there's two quotations in the
22 article, one of them supports allowing trans women to
23 participate and the other one opposes allowing
24 transgender women to participate, you decided to cite
25 to the quote that opposes allowing trans women to 02:43:42

Page 227

1 participate; right?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: Yes, that is what I quoted.

4 BY MR. BLOCK:

5 Q Okay. And why did you choose to cite the 02:43:55
6 portions that you believe support opposing -- I'll ask
7 again.

8 Why did you choose to cite to the portions
9 that would support excluding transgender women instead
10 of the portions of the article that you think support 02:44:08
11 including them?

12 MR. FRAMPTON: Object to the form.

13 THE WITNESS: Because as I read the article
14 and evaluated the information, I thought it was a clear
15 statement opposing the inclusion of trans women in 02:44:22
16 women's sports.

17 (Exhibit 79 was marked for identification
18 by the court reporter and is attached hereto.)

19 BY MR. BLOCK:

20 Q Okay. So let's look at the -- let's look at 02:44:28
21 the article.

22 So this will appear on your screen in a second
23 as Exhibit 79. Let me know when it appears.

24 A All right. Exhibit 079 - Hamilton.

25 Q Okay. Is this article that you were 02:45:19

Page 228

1 referencing when you cited to the 2021 Hamilton
2 article?

3 A Yes. I think I also refer to it in my
4 declaration as the FIMS 2021 statement.

5 Q Yeah. What -- what is FIMS? 02:45:33

6 A It's the International Sports Medicine
7 Federation. I think it's French, is why it's like
8 Federation International Medicine Sport. That's why it
9 becomes FIMS.

10 Q Uh-huh. 02:45:46

11 A Beyond that, it's just a -- it's a
12 professional organization of people interested in
13 sports medicine.

14 Q Is -- in your -- your report, you say that the
15 statement is "signed by more than 60 sports medicine 02:46:01
16 experts from prestigious institutions around the
17 world"; is that right?

18 A What page is that on my declaration so I make
19 sure I'm agreeing to a number that --

20 Q Sure. It's paragraph 167, which is page 56 of 02:46:16
21 the PDF. And it's page 51 of the bottom pagination.

22 A All right. Yes, that is what I stated in my
23 declaration.

24 Q Okay. So the views expressed by this body,
25 you think, are entitled to significant weight; right? 02:46:36

Page 229

1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: It is an -- it is a statement
3 from an organization that is, you know, a respected
4 organization.

5 BY MR. BLOCK: 02:46:58

6 Q Okay. If you turn to page 2 of this, so
7 page 1402, at the top left, there's a little box that
8 says "Key Points."

9 Do you see that?

10 A Yes. 02:47:08

11 Q Okay. Key Points. And the first point there
12 is (as read):

13 "The use of testosterone concentration
14 limits of 5 nmol/L in transwomen and
15 DSD women athletes is a justifiable
16 threshold based on the best available
17 scientific evidence."

02:47:19

18 Did I read that right?

19 A You read that correctly.

20 Q And so of the points in this article 02:47:29
21 highlighted as the key points, this is the first one;
22 right?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: Yes, that appears to be the
25 first highlighted key point. 02:47:39

Page 230

1 BY MR. BLOCK:

2 Q Okay. But you didn't choose to mention this
3 first key point in your report; right?

4 A That is correct.

5 Q Okay. Why not? 02:47:49

6 A I disagree with that key point.

7 Q Okay. So you only highlighted -- you only
8 cited to the portions of this article that you agreed
9 with; right?

10 MR. FRAMPTON: Object to the form. 02:47:58

11 THE WITNESS: I cited the information that I
12 agree with after evaluating the other scientific
13 information.

14 BY MR. BLOCK:

15 Q Let's go to 1409. 02:48:22

16 Do you see that?

17 A Yes.

18 Q Okay. So the third bullet point here, when we
19 get to -- this is -- I'm sorry, under -- this whole
20 section of bullet points is under the subsection 5.7 02:48:41
21 "FIMS Consensus Statements for the Integration of DSD
22 Women and Transwomen Athletes into Elite Female Sport";
23 right?

24 A That is correct.

25 Q All right. So based on the foregoing 02:48:53

Page 231

1 information discussed in the article, these are the
2 consensus statements that FIMS agreed upon; right?

3 A That's a reasonable conclusion, yes.

4 Q Okay. So the third bullet point on the
5 right-hand column is (as read):

02:49:13

6 "Transwomen have a (sic) right to
7 compete in sports. However, cisgender
8 women have the right to compete in a
9 protected category."

10 Is that right?

02:49:26

11 A That's correct.

12 Q Okay. And this bullet point is a bullet point
13 that you included in your report; right?

14 A Correct.

15 Q Okay. Do you know if you included any of the
16 other bullet points in your report?

02:49:33

17 A I don't think I included any of the other
18 bullet points.

19 Q Okay. So let's look at some of those other
20 bullet points.

02:49:46

21 If you go two bullet points down from the --
22 the one we just looked at, it says (as read):

23 "As each sport can vary greatly in
24 terms of physiological demands, we
25 support the view held also by others

02:49:58

Page 232

1 stating that individual
2 sport-governing bodies should develop
3 their own individual policies based on
4 broader guidelines developed on the
5 best available scientific evidence, 02:50:09
6 determined experimentally from a
7 variety of sources with a particular
8 preference for studies on transwomen
9 and DSD women athletes."

10	Did I read that right?	02:50:19
----	------------------------	----------

11	A Yes.
----	--------

12 Q Okay. So this bullet point supports having
13 different policies developed by different sport's
14 governing bodies; right?

15 MR. FRAMPTON: Object to the form. 02:50:32

16 THE WITNESS: That is a great example of a
17 bullet point that seems contradictory to a previous
18 statement.

19 BY MR. BLOCK:

20 Q Okay. But this statement here does not 02:50:39

21 support an across-the-board policy that applies to all

22 difference types of sports; is that right?

23 MR. FRAMPTON: Same objection.

24	Go ahead.
----	-----------

25 THE WITNESS: That is correct. 02:50:54

1 BY MR. BLOCK:

2 Q And then two more bullet points down, it says
3 (as read):

4 "The use of serum testosterone
5 concentrations as the primary 02:51:17
6 biomarker to regulate the inclusion of
7 athletes into male and female
8 categories is currently the most
9 justified solution as it is supported
10 by the available scientific literature 02:51:27
11 and should be implemented at the elite
12 level, where there is an emphasis on
13 performance enhancement."

14 Did I read that right?

15 A Yes, you read that correctly. 02:51:38

16 Q Okay. And that's -- that's similar to the key
17 point that we talked about before, on the second page;
18 right?

19 A That is similar to that previous key point.

20 Q Okay. And then if you turn the page, the 02:51:46
21 first full -- fir- -- excuse me -- the first full
22 bullet point at the top, you know, again, is --
23 essentially restates the -- the key point that we
24 discussed before; is that right?

25 MR. FRAMPTON: Same objection. 02:52:04

Page 234

1 Go ahead.

2 THE WITNESS: Yes. That reiterates the
3 5 nmol/L threshold for testosterone.

4 BY MR. BLOCK:

5 Q Okay. And then the sentence also says that 02:52:14
6 that threshold may be modified as new evidence arises
7 for an event or sport-specific concentrations; is that
8 right?

9 A Yes, that is what it says.

10 Q Okay. And so -- so that -- that bullet point 02:52:28
11 and the other bullet point we looked at about the use
12 of serum testosterone and the other bullet point about
13 having individual policies for individual sports are
14 bullet points that you disagreed with; right?

15 A That is correct. 02:52:49

16 Q Okay. And because you disagreed with them,
17 you did not include them in your report?

18 MR. FRAMPTON: Object to the form.

19 Go ahead.

20 THE WITNESS: That is correct. 02:53:01

21 BY MR. BLOCK:

22 Q Okay. But at least according to this
23 document, the -- all the authors of this statement had
24 agreed on those bullet points as consensus statements;
25 right? 02:53:19

Page 235

1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: Assuming that the authors, you
3 know, agreed to it with their signature, that is a
4 reasonable assumption.

5 BY MR. BLOCK: 02:53:31

6 Q Okay. Great.

7 And actually -- in fact -- one second.

8 All right. If you look at page 1403, it
9 says -- at the bottom of that first paragraph, do you
10 see where it says "all statements"? 02:54:16

11 A The bottom of which paragraph?

12 Q Sorry. On the right-hand column, on
13 page 1403, under the "Methods" section, do you see
14 that? The paragraph begins with -- with "here."
15 "Here, we present." 02:54:37

16 A Yes.

17 Q Okay. So the last sentence -- the last two
18 sentences say (as read):

19 "All statements received unanimous
20 approval by all named authors except 02:54:48
21 for the statement on the testosterone
22 limit of 5 nmol/L, which received
23 majority approval and the voting
24 result is included in this (sic)
25 article." 02:54:59

Page 236

1 Do you see that?

2 A Yes, I see that.

3 Q All right. So let's go down to what the
4 voting results were for that.

5 Okay. It's actually on the bullet points that 02:55:20
6 we looked at before, on 1410.

7 A On page 1410?

8 Q Uh-huh.

9 A All right.

10 Q Okay. So beginning with -- so the first -- 02:55:38
11 the second full bullet point, it says (as read):

12 "The statement on the testosterone
13 concentration threshold for transwomen
14 and DSD women athletes was the only
15 point of contention for the FIMS 02:55:48
16 Panel. All 70 authors voted, of whom
17 87% were in favour of the 5 nmol/L
18 threshold, 2% of the authors were in
19 favour of a threshold of 8 nmol/L, 2%
20 were in favour of a threshold around 02:56:04
21 the upper testosterone concentration
22 of normal healthy females of
23 0.2-1.7 nmol/L, and 8% of authors were
24 in favour of no change to the limit
25 until further evidence was acquired." 02:56:18

Page 237

1 Do you see that?

2 A Yes, I see that.

3 Q Okay. So -- so based on this paragraph, it
4 appears that none of the 70 authors supported a policy
5 of prohibiting trans women from participating, you 02:56:35
6 know, regardless of how low they suppressed their
7 circulating testosterone levels; right?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: Can you restate the question?

10 BY MR. BLOCK: 02:56:58

11 Q Sure. Did any of the 70 au- -- 70 authors
12 vote in favor of prohibiting trans women completely
13 from prohibiting -- from -- from participating in
14 women's sports regardless of how low they -- they
15 lowered their levels of circulating testosterone? 02:57:15

16 MR. FRAMPTON: Same objection.

17 THE WITNESS: I would really like to read the
18 article more and not just look at this particular
19 statement on their decision on what they thought were
20 acceptable testosterone levels. 02:57:27

21 BY MR. BLOCK:

22 Q Okay. But based on this paragraph, it appears
23 that none of the 70 authors supported a policy
24 analogous to H.B. 3293; right?

25 MR. FRAMPTON: Same objection. 02:57:46

Page 238

1 THE WITNESS: And this is another example of
2 something that is confusing and contradictory to me, is
3 when they say that cisgender women deserve a protected
4 category and then have this kind of a statement.

5 BY MR. BLOCK: 02:57:57

6 Q Well, isn't one way to reconcile it that it's
7 possible to have a protected category for cisgender
8 women if appropriate conditions are placed on the
9 participation of trans women?

10 MR. FRAMPTON: Object to the form. 02:58:17

11 THE WITNESS: My understanding of the
12 intention of the authors is then it would no longer be
13 a protected category.

14 BY MR. BLOCK:

15 Q Well, it would be protected from participation 02:58:24
16 by cisgender men or anyone else with circulating levels
17 of testosterone over the threshold limit; right?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: Within the -- the field, a
20 protected category of women typically means biological 02:58:38
21 women.

22 BY MR. BLOCK:

23 Q Okay. Let's look at the next document.

24 All right. And, actually, we already marked
25 this one as an exhibit. This is the women's policy 02:58:57

Page 239

1 briefing book. So this is Exhibit 69, if you could
2 pull it up again.

3 A All right. Women's Sports Policy Working
4 Group, Briefing Book?

5 Q Yes. 02:59:21

6 All right. If you look at page 15.

7 A All right. Page 15.

8 Q So at the -- the top, you can see this is
9 their Proposed Amendment to the Title IX Regulations.

10 Do you see that? 03:00:04

11 A Yes.

12 Q Okay. So if we scroll down to subsection C,
13 Treatment of Transgender Athletes, do you see that?

14 A Yes.

15 Q Okay. So -- so subsection (c)(1) says (as 03:00:12
16 read):

17 Because trans girls/women who have not
18 begun male puberty do not have
19 significant male linked -- male
20 sex-linked advantages, they shall be 03:00:24
21 included in girls' and women's sports
22 without conditions or limitations.

23 Do you see that?

24 A I see that.

25 Q All right. So to the extent that H.B. 3293 03:00:33

Page 240

1 prohibits trans girls and women from participating in
2 women's sports, even if they have not experienced
3 endogenous male puberty, the authors of this briefing
4 book would disagree with H.B. 3293, to that extent?

5 MR. FRAMPTON: Object to the form. 03:00:56

6 THE WITNESS: I don't think that I can speak
7 on behalf of these authors for what they agree or
8 disagree with regarding H.B. 323 (sic) -- whatever it
9 is. Sorry.

10 BY MR. BLOCK: 03:01:12

11 Q Okay. So do you think that subsection (c)(1)
12 is consistent with H.B. 3293?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: Well, (c)(1) says they shall be
15 included in girls and women's sports. 03:01:28

16 BY MR. BLOCK:

17 Q So the answer to my question is yes?

18 MR. FRAMPTON: Object to the form.

19 BY MR. BLOCK:

20 Q I mean -- no, I'll just ask that again. 03:01:40

21 Can you just give me a "yes" or "no" answer so
22 I don't have to worry about getting a clean transcript?

23 So just -- my question is, is section (c)(1)
24 consistent with H.B. 3293?

25 MR. FRAMPTON: Same objection. 03:01:52

Page 241

1 Go ahead.

2 THE WITNESS: I think there is an
3 inconsistency there.

4 BY MR. BLOCK:

5 Q Okay. Thank you. 03:02:02

6 If you look at section (c)(3), it says (as
7 read):

8 "Trans girls/women who have
9 experienced all or part of male
10 puberty and who have sufficiently 03:02:14

11 mitigated their male sex-linked
12 advantages – through surgery and/or
13 gender affirming hormones consistent
14 with the rules of their international
15 federations – may participate in 03:02:25

16 girls'/women's sport without
17 additional conditions or limitations."

18 Do you see that?

19 A I see that.

20 Q Okay. And so section (c)(3) is also 03:02:32
21 inconsistent with H.B. 3293; correct?

22 MR. FRAMPTON: Same objection.

23 Go ahead.

24 THE WITNESS: I would say that it may or may
25 not, apparently depending on the rules of the 03:02:44

Page 242

1 international federations.

2 BY MR. BLOCK:

3 Q Okay. So are there any international
4 federations, aside from rugby, that categorically
5 exclude girls and women who are transgender from 03:02:58
6 participating in the female category?

7 A There have been a lot of changes in those
8 lately and a lot of organizations debating that, and so
9 I can't say for certain whether there is or is not an
10 organization or no organizations that specifically 03:03:16
11 state that.

12 Q But you consider yourself an expert on this
13 issue, don't you?

14 A Yes. And there's a lot of organizations that
15 are in process of making decisions, and so I can't say 03:03:29
16 what their decisions are when they have not released
17 their decisions.

18 Q All right. Well, has any organization
19 released a decision excluding trans girls and women
20 from participating in the female category, even if they 03:03:43
21 have lowered their circulating testosterone, besides
22 rugby?

23 A I know swimming had a recent change, and I
24 can't remember the exact wording on that, and -- again,
25 that's what I can remember right now at this moment. 03:04:10

Page 243

1 Q All right. Does -- did the recent change from
2 swimming categorically exclude trans girls and women
3 from participating in women's swimming events?

4 MR. FRAMPTON: Objection to the form.

5 THE WITNESS: I would need to look at the 03:04:28
6 document to be sure.

7 BY MR. BLOCK:

8 Q Isn't it true that the new swimming policy
9 extended the period of hormone suppression to three
10 years? Does that sound familiar to you? 03:04:46

11 A As you say it, it sounds familiar, but I can't
12 be sure if I'm remembering it because you told me I
13 should remember it.

14 Q Okay. Well, we'll -- we'll get you a -- a
15 copy of that. 03:05:05

16 And then subsection (4) says (as read):

17 "Trans girls/women who have
18 experienced all or part of male
19 puberty and who have not, or only
20 insufficiently, mitigated their male 03:05:19
21 sex-linked advantages according to the
22 international federation standards in
23 their sport may be accommodated within
24 girls'/women's sports but not in
25 head-to-head competition with female 03:05:31

Page 244

1 athletes."

2 Do you see that?

3 A I see that.

4 Q Okay. And so that also is inconsistent with

5 H.B. 3293; correct? 03:05:39

6 MR. FRAMPTON: Object to the form.

7 THE WITNESS: This is somewhat of a confusing

8 statement because how is somehow included in women's

9 sports if they're not competing head-to-head with

10 women. 03:05:50

11 BY MR. BLOCK:

12 Q Well, there's scrimmages and, you know, team

13 practices and other events that are not for trophies.

14 Those are some examples; right?

15 A And I would ask, are they really included, 03:06:07

16 then, if they can only participate in limited aspects

17 of the sport.

18 Q Okay. But my question is whether or not this

19 is consistent with H.B. 3293.

20 And so section (c)(4) is inconsistent with 03:06:22

21 H.B. 3293; correct?

22 MR. FRAMPTON: Object to the form.

23 THE WITNESS: I would need to refer back to

24 the bill to be certain, but I think that your statement

25 is, yes, this is an inconsistency. 03:06:39

Page 245

1 BY MR. BLOCK:

2 Q Okay. Let's go back to your report. So
3 that's Exhibit -- oh, I'm sorry, I just want to make
4 sure we got through all of the sources cited in that
5 paragraph of your report. So let me -- let's turn to 03:07:09
6 your report and just make sure we've -- we've looked at
7 all of them because I don't want to leave any out.

8 I believe -- is this on page 8? Or
9 paragraph 8? It's paragraph 8, I believe. On page 7,
10 paragraph 8. 03:07:30

11 Let me know when you're there.

12 A I'm there.

13 Q Okay. So we looked at Coleman 2020; correct?

14 A Yes.

15 Q And Hilton and Lundberg 2021; correct? 03:07:42

16 A Yes.

17 Q And World Rugby?

18 A Yes.

19 Q And Harper 2021?

20 A Yes. 03:07:53

21 Q And Hamilton 2021?

22 A Yes.

23 Q And a briefing book prepared by the Women's
24 Sports Policy Working Group 2021; right?

25 A Yes. 03:08:00

Page 246

1 Q Okay. So now that we've looked at all of
2 those, do any of them advocate in favor of excluding
3 girls and women who are trans from participating in
4 women's sports if they have had puberty blockers and
5 not gone through endogenous puberty? 03:08:17

6 MR. FRAMPTON: Object to the form.

7 Go ahead.

8 THE WITNESS: I still think that that
9 statement from Hamilton, where they say women deserve a
10 protected category, with the understanding that 03:08:24
11 protected category, as it is used in the field, means
12 biological women only.

13 BY MR. BLOCK:

14 Q Okay. But other portions of the -- the
15 Hamilton statement don't support that; correct? 03:08:39

16 A Correct.

17 Q Okay. So after reviewing all these sources,
18 let's see, how -- how many of them do we think support
19 excluding girls and women who are transgender if
20 they've experienced puberty and then suppressed their 03:09:04
21 testosterone?

22 MR. FRAMPTON: Object to the form.

23 THE WITNESS: So as we've reviewed these
24 sitting here, I would say Hamilton supports it, with
25 the caveat that it is, at times, contradictory. 03:09:20

Page 247

1 BY MR. BLOCK:

2 Q Okay. And did any of these sources support
3 having a single across-the-board rule that applied to
4 all sporting events?

5 MR. FRAMPTON: Object to the form. 03:09:37

6 THE WITNESS: Again, the same statement with
7 Hamilton seems to state that, with the caveat that, I
8 guess, you and I can agree there is some contradiction
9 or confusion there.

10 BY MR. BLOCK: 03:09:51

11 Q Okay. Let's look at page 4 of your report.

12 A All right. Page 4, Overview.

13 Q Yes. If you look at the second bullet point.

14 A Okay.

15 Q It says (as read): 03:10:13

16 "Biological male physiology is the
17 basis for the performance advantage
18 that men, adolescent boys, or male
19 children have over women, adolescent
20 girls, or female children in almost
21 all athletic events."

22 Did I read that right?

23 A Yes, you read that correctly.

24 Q Okay. And so your expert opinions about
25 transgender women are based on the premise that 03:10:34

Page 248

1 transgender women who have not had any gender-affirming
2 medical interventions will have the same physiology as
3 cisgender men; right?

4 MR. FRAMPTON: Object to the form.

5 THE WITNESS: Yes, they are still biological 03:10:51
6 males.

7 BY MR. BLOCK:

8 Q And will have the same physiological
9 characteristics that are the basis for the performance
10 advantage; correct? 03:10:59

11 MR. FRAMPTON: Same objection.

12 THE WITNESS: That is correct. Male
13 physiology is the basis of the performance advantage.

14 BY MR. BLOCK:

15 Q So let's go back to that Hamilton article we 03:11:09
16 were discussing. So that is, I believe, Exhibit 79.

17 A All right.

18 Q Okay. Can you go to page 1402, please.

19 A All right. 1402.

20 Q Okay. Pull that up. 03:11:39

21 If you look on the right-hand column, on this
22 little table 1 --

23 A Yes.

24 Q -- do you see that?

25 And then you go -- one, two, three, four -- 03:11:54

Page 249

1 five items down there, there's a line that begins with
2 "the assumption."

3 Do you see that?

4 A I do see that.

5 Q Okay. And that sentence says (as read): 03:12:04

6 "The assumption that the physiology of
7 elite DSD women and transwomen
8 athletes is the same as elite male
9 athletes is an oversimplified view."

10 Do you see that? 03:12:15

11 A I see that statement.

12 Q Okay. And you didn't cite to that statement
13 in your report; right?

14 A I disagree with that statement.

15 Q And, therefore, because you disagreed with it, 03:12:23
16 you chose not to cite it in your report?

17 MR. FRAMPTON: Object to the form.

18 THE WITNESS: I don't think it's appropriate
19 to cite a statement that I don't think I can defend.

20 BY MR. BLOCK: 03:12:36

21 Q Okay. Do you think it's appropriate to cite
22 an article who -- that contains many statements that --
23 that you don't think you can defend?

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: Yes. Trying to cite that there 03:12:53

Page 250

1 is a lot of information out there.

2 BY MR. BLOCK:

3 Q I see.

4 If we go to page 1406 -- well, actually,
5 before going there, were you aware of this statement in 03:13:07
6 the Hamilton article at the time that you wrote your
7 report?

8 A Yes. I cited the Hamilton article. I had
9 read it.

10 Q All right. You -- okay. So you read the 03:13:22
11 whole thing, and then you picked out certain statements
12 to cite?

13 A Correct.

14 Q Okay. So if you go to page 1406.

15 Do you -- do you see your role in this case as 03:13:45
16 an advocate for one side or the other?

17 MR. FRAMPTON: Object to the form.

18 THE WITNESS: I have been retained to give my
19 expert opinion, my expert analysis of the data.

20 BY MR. BLOCK: 03:14:01

21 Q All right. And to -- but do -- do you see
22 your role in this case as presenting the portions of
23 the data that support one side?

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: I think my role is to present 03:14:19

Page 251

1 the data and the information with which I agree with as
2 an expert.

3 BY MR. BLOCK:

4 Q Okay. So you -- you don't see your role in
5 this case as prevent- -- presenting an overview of the 03:14:32
6 data for and against H.B. 3293; right?

7 MR. TRYON: Objection.

8 MR. FRAMPTON: Object to form.

9 THE WITNESS: I think I'm suppo- -- my role is
10 presenting the information from the best of my 03:14:52
11 expertise and analysis of it, which -- what I think is
12 the correct information.

13 BY MR. BLOCK:

14 Q Okay. Not -- so -- so you don't think -- if
15 the Court wanted just an overview of the information 03:15:07
16 out there for and against H.B. 3293, your expert report
17 wouldn't be the source of getting that; right?

18 MR. FRAMPTON: Object to the form.

19 MR. TRYON: Objection.

20 THE WITNESS: I would think that would be a 03:15:27
21 specific request made by the Court to get information.

22 BY MR. BLOCK:

23 Q So -- but you saw -- but you said, when you
24 wrote your blog post, that, you know, the purpose of
25 that blog post was to provide information for educators 03:15:46

Page 252

1 to use on their own, to teach the subject; right?

2 A That is correct.

3 Q Okay. And so you wrote that blog post with a
4 different purpose in mind than you wrote this document;
5 right?

03:16:03

6 A Yes. The blog post was intended for
7 educators.

8 Q And do you think that it's important for
9 educators to have accurate information?

10 MR. FRAMPTON: Object to the form.

03:16:20

11 THE WITNESS: Yes, educators need accurate
12 information.

13 BY MR. BLOCK:

14 Q Okay. So do -- do you think educators need
15 information different from what the court needs?

03:16:26

16 MR. FRAMPTON: Object to the form.

17 THE WITNESS: Truthful information is truthful
18 information, and I've done my best to present truthful
19 information.

20 BY MR. BLOCK:

03:16:40

21 Q Okay. So let's go to 1406 of -- of Hamilton.

22 MR. TRYON: Before you go on.

23 Mr. Frampton, I can't hear you when you're
24 objecting. If you could speak a little louder, please.

25 MR. FRAMPTON: Sure.

03:17:08

Page 253

1 BY MR. BLOCK:

2 Q So in -- in 1406, in the paragraph beginning
3 with the words "despite the lack," do you see that?

4 A Page 1406?

5 Q Left -- left-hand column -- 03:17:23

6 A Okay. Yeah. That's three down?

7 Q Yes.

8 A Okay.

9 Q Okay. If you look at, I think, the third
10 sentence, after it says "Table 1," in parentheses, it 03:17:39
11 says (as read):

12 "Data showing lower baseline isometric
13 torque and muscle volume in transwomen
14 compared to cisgender males highlight
15 the problematic nature of inferring 03:17:50
16 that transwomen and cisgender males
17 are the same, as this ignores the
18 impact of gender-affirming treatments
19 such as HRT and GAS and the
20 psychological effects of gender 03:18:00
21 dysphoria such as low self-esteem,
22 anxiety and/or depression, and
23 becoming socially isolated."

24 Do you see that?

25 A I see that. 03:18:09

Page 254

1 Q Okay. Do you disagree that there is data
2 showing lower baseline isometric torque and muscle
3 volume for trans women compared to cisgender women?

4 A So if I'm remembering correctly, reference 51
5 here is probably to the -- the article by Wiik and 03:18:26
6 Lundberg and others. That is the only paper I'm aware
7 of that evaluated isometric torque and muscle volume in
8 transgender individuals.

9 Can I refer to that paper to verify?

10 Q Yeah. If you look at 51, it -- it does go 03:18:40
11 back to the -- the Wiik article.

12 You're saying you want to look directly at the
13 Wiik article?

14 A I would like to.

15 Q All right. Well, we can try to make time for 03:18:51
16 that later.

17 So -- but sitting here, you're saying you're
18 not sure that that sentence accurately reports the --
19 the findings of the Wiik article?

20 A Yeah, I can't remember for -- right now what 03:19:08
21 the baseline data were in the Wiik article, whether
22 they were statistically significant or just numerically
23 different or what.

24 Q Okay.

25 A I can see the graph in my mind, but not in 03:19:22

1 enough detail to completely answer that.

2 Q Okay. Hold on one second. All right.

3 Let's go to the Harper article again. So that
4 is Exhibit 78.

5 A All right. 03:20:13

6 Q So if you go to page 7 of the Harper.

7 A All right.

8 Q All right. There's a paragraph that begins
9 with "of interest."

10 Do you see that? 03:20:42

11 A Right-hand side, first full paragraph, under
12 the table?

13 Q Yes.

14 A Okay.

15 Q All right. Where it says (as read): 03:20:48

16 "Of interest, compared with cisgender
17 men, hormone-naïve transwomen
18 demonstrate 6.4%-8.0% lower lean body
19 mass, 6.0%-11.4% lower muscle CSA and
20 approximately 10%-14% lower handgrip
21 strength."

22 Do you see that?

23 A Yes.

24 Q And then it says (as read):

25 "This disparity is noteworthy given 03:21:14

Page 256

1 that hormone-naive transwomen and
2 cisgender men have similar
3 testosterone levels."

4 Do you see that?

5 A Yes. 03:21:20

6 Q Okay. So do you have any reason to disagree
7 with those reported findings?

8 A I would like to include the next sentence,
9 where it says "explanations for this strength
10 difference are unclear," and continuing on with that, 03:21:37
11 indicating that the trans women may actively refrain
12 from building muscle and/or engaging in disordered
13 eating.

14 So there's a whole statement of speculative
15 explanations for that. 03:21:51

16 Q So do you -- do you have any explanations for
17 those differences?

18 A Well, we have no known biological markers in
19 which we can draw blood or a sample of something to say
20 that a person is transgender. And so it would 03:22:10
21 apparently be a social explanation for why the
22 transgender individuals have lower handgrip strength
23 and smaller muscles.

24 Q Okay. And so does that -- does that affect
25 whether or not having lower handgrip strength and 03:22:31

Page 257

1 stronger (sic) muscles gives an advantage in athletic
2 performance?

3 MR. FRAMPTON: Object to the form.

4 Go ahead.

5 THE WITNESS: In those cited studies, the 03:22:43
6 handgrip strength of the trans women was in the 90 to
7 95th percentile for cisgender women.

8 So while they may be slightly less strong than
9 a typical male, they are considerably stronger than the
10 typical female. 03:22:57

11 Q Okay. Right. But my -- but my question is,
12 in terms of comparing the strength of trans women to
13 the strength of cis men, don't those studies show that,
14 with respect to those indicators of athletic
15 performance, the trans women are not the same as the 03:23:19
16 cis men?

17 MR. FRAMPTON: Object to the form.

18 THE WITNESS: So, Mr. Block, are you trying to
19 say that smaller, weaker men are trans women?

20 BY MR. BLOCK: 03:23:37

21 Q I'm -- I'm asking my question.

22 Can you answer my question, please?

23 A Could you please clarify the question?

24 Q Yes.

25 Don't those -- doesn't that data show that -- 03:23:47

Page 258

1 to use the words of Harper -- hormone-naive trans women
2 may not, on average, have the same athletic attributes
3 as cisgender men?

4 MR. FRAMPTON: Object to the form.

5 Go ahead. 03:24:05

6 THE WITNESS: I think there are a whole lot of
7 qualifying statements that need to be included in that.

8 BY MR. BLOCK:

9 Q Okay. And so putting aside the cause of these
10 differences, putting aside whether those causes are, 03:24:22
11 you know, physiological or as a result of social
12 factors, all right, at the end of the day, regardless
13 of the cause, doesn't this data reflect that on a
14 population level, hormone-naive trans women may not, on
15 average, have the same athletic attributes as cisgender 03:24:46
16 men?

17 MR. FRAMPTON: Same objection.

18 Go ahead.

19 THE WITNESS: Those studies were not
20 attempting to evaluate baseline population-wide 03:24:57
21 strength for trans women, and so I don't think that we
22 can accurately extrapolate them to the population of
23 trans women.

24 BY MR. BLOCK:

25 Q Okay. If the participa- -- in the 03:25:08

Page 259

1 participants on -- in those studies had performed
2 physical fitness tests alongside cisgender men, would
3 it be reasonable to assume that the participants in
4 these studies would not have performed as well on those
5 physical fitness tests? 03:25:26

6 MR. FRAMPTON: Object to form.

7 THE WITNESS: So if we are stating these
8 participants, yes, these participants were not as
9 strong as their comparison group.

10 But I do again want to caveat that neither of 03:25:40
11 these groups really were designed to represent
12 population-wide strength or body mass distributions.

13 BY MR. BLOCK:

14 Q Now, you've discussed in your article -- or
15 your article -- you've discussed in your report, you 03:25:57
16 know, your view that once you have acquired muscle
17 mass, that lowering your circulating testosterone does
18 not sufficiently reduce that muscle mass to eliminate a
19 performance advantage; is that right?

20 A I think you've appropriately characterized 03:26:20
21 what I've stated.

22 Q Thank you.

23 And so in your article, do -- or in your
24 report, do you discuss at all whether if someone lowers
25 their circulating testosterone before acquiring a lot 03:26:37

Page 260

1 of muscle mass or doing exercises or training, whether
2 having a lower level of testosterone would restrict
3 their ability to add new muscle mass?

4 MR. FRAMPTON: Object to the form.

5 THE WITNESS: I don't think I addressed that 03:27:04
6 topic specifically, as far as how much reducing
7 testosterone and then engaging in training can
8 compensate for reduced testosterone.

9 BY MR. BLOCK:

10 Q Okay. So let's say the -- the trans women in 03:27:16
11 this study and the cis men in the study both engage in
12 the same types of exercise regimens, but the trans
13 women, given their lower baselines and -- have these
14 lower baselines and have lowered their testosterone
15 before engaging in these exercise regimens, is it -- do 03:27:49
16 you have an expert opinion on whether you would expect
17 that these trans women, having lowered their
18 testosterone levels, would be able to acquire new
19 muscle mass at the same degree as the cis men who had
20 not lowered their testosterone levels? 03:28:05

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: Based on research not cited in
23 my article, because I didn't think it was worth going
24 into in that particular publication -- or that expert
25 declaration, there is information that in middle-aged 03:28:20

Page 261

1 men who suppress their testosterone and such as a
2 treatment for prostate health problems, they're able to
3 engage in strength training to overcome the lost
4 testosterone. And so that is the closest to a
5 speculative statement we can make regarding of how 03:28:43
6 transgender women, or trans women, would respond to
7 training.

8 BY MR. BLOCK:

9 Q Okay. If we go back to the Hamilton article
10 for a second. I apologize. If you go to 1407 of the 03:29:05
11 Hamilton article.

12 Let me know when you're there, okay?

13 A All right. 1407. I'm there.

14 Q Uh-huh. It says -- halfway through the -- the
15 first paragraph there, there's a sentence that begins 03:30:11
16 "in contrast."

17 Do you see that?

18 A Page 1407. Are we on the left-hand side?

19 Q I'm sorry, on the right-hand side.

20 A Ah, okay. I wondered. 03:30:26

21 There we go. Right-hand side, just after
22 citation to 61, it says, "In contrast."

23 Q Right. It says (as read):

24 "In contrast, when bioavailable
25 testosterone was reduced to castrate 03:30:34

Page 262

1 levels in young men, isometric
2 strength did not increase after
3 resistance exercise training."

4 Are you familiar with that study that --
5 that's being referred to? 03:30:48

6 A I am not familiar with that study.

7 Q Okay. If you look at footnote 62 of the
8 article, it says it's a study by Kvorning,
9 K-V-O-R-N-I-N-G, from 2006.

10 Just sitting here today, does -- are you 03:31:09
11 familiar with the Kvorning study from 2006?

12 A That -- that study is not ringing a bell.

13 Q Okay.

14 Okay. The -- the name of the study is
15 "Suppression of endogenous testosterone production 03:31:27
16 attenuates the response to strength training: a
17 randomized, placebo-controlled, and blinded
18 intervention study."

19 Still doesn't ring a bell?

20 A Still not ringing a bell. 03:31:40

21 Q Okay. So if -- if -- from the title of that
22 study, does the study seem to be in tension with the
23 study you just cited to me about how people, the
24 cisgender men, who are on therapies that lower their
25 tosterone -- testosterone being able to have strength 03:32:01

Page 263

1 training to overcome the deficit?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: Looking at that study and the
4 study I was referring to, it appears that the two are
5 somewhat contradictory, but it's also hard to say with 03:32:21
6 this saying young men and the older -- the other one
7 was dealing with older men.

8 Without looking at both studies side by side,
9 it's really hard to make a comparison.

10 BY MR. BLOCK: 03:32:32

11 Q Okay. So in the -- in the Hamilton article,
12 after the sentence I read, it says (as read):

13 "Assuming these findings are
14 replicated and if extrapolated to
15 elite DSD women athletes and 03:32:46
16 transwomen athletes, they would imply
17 that decreasing bioavailable
18 testosterone concentrations would
19 mitigate to some extent any previous
20 sporting advantage due to the 03:32:57
21 previously high testosterone
22 concentrations."

23 Do you agree with that sentence?

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: Would mitigate to some extent, 03:33:12

Page 264

1 yes.

2 BY MR. BLOCK:

3 Q Okay.

4 MR. BLOCK: Can we take a break and go off the

5 record? 03:33:19

6 THE VIDEOGRAPHER: We are off -- off the

7 record at 3:33 p.m.

8 (Recess.)

9 THE VIDEOGRAPHER: We are on the record at

10 3:43 p.m. 03:43:29

11 BY MR. BLOCK:

12 Q Hi, Dr. Brown. I -- I won't keep you too much

13 longer, but -- but I do have some -- I'm going to keep

14 you a little bit longer, though.

15 If -- 03:43:39

16 A No worries.

17 Q If we could go to the Hilton article again,

18 which is marked as Exhibit -- I can't see it on my

19 computer. One sec. The Hilton article is Exhibit 76.

20 A All right. 03:44:05

21 Q All right. Thanks.

22 If you look at page 208, under 4.3.

23 A Yes.

24 Q All right. Just the second sentence there, it

25 says (as read): 03:44:35

Page 265

1 "Sex differences in endurance

2 performance are generally smaller than

3 for events relying more on muscle mass

4 and explosive strength."

5 Do you see that?

03:44:43

6 A Yes, I see that.

7 Q Okay. Do you -- do you agree with that

8 statement?

9 A Typically, the differences between males and

10 females for endurance running events or swimming events 03:44:52

11 are somewhere in the range of 10 to 13 percent compared

12 to the 25 percent or more in strength sports.

13 Q So -- so that means you agree with that

14 statement?

15 A Yes.

03:45:08

16 Q Okay. Thanks.

17 All right. If you look at, again, 208, it

18 says -- the paragraph before 4.3.

19 A That big long one?

20 Q Yep.

03:45:49

21 And near -- like two-thirds down, there's a

22 sentence that begins with "furthermore."

23 Do you see that?

24 A Okay. Furthermore, given the (sic) cohorts?

25 Q Yeah. So I -- I just want to direct your

03:46:01

Page 266

1 attention to the first half of the sentence. This is
2 the Hilton article. And it says (as read):

3 "Furthermore, given that cohorts of
4 transgender women often have slightly
5 lower baseline measurements of muscle 03:46:15
6 and strength than control males."

7 Do you see that?

8 A Yes.

9 Q Okay. And then if you follow that footnote,
10 it goes to footnote 53, and there's an article by 03:46:25
11 someone whose name I can't pronounce. It's Van
12 C-A-E-N-E-G-E-M.

13 Are you able to click through to footnote 53?

14 A Can we agree to call that Van C?

15 Q Oh, good -- good call. Yes. 03:46:46

16 A Yeah, I don't know how to say the last name
17 either.

18 Q Okay. All right.

19 And so could you -- you see the footnote?

20 A Yes. 03:46:52

21 Q Okay. And the footnote is to an article that
22 says, "Preservation of volumetric bone density and
23 geometry in trans women during cross-sex hormonal
24 therapy: a prospective observational study"; right?

25 A Yes. 03:47:06

Page 267

1 Q Okay. And so Hilton cites this article for
2 the proposition that -- I have to get -- I don't want
3 to misquote her. Hold on -- it says -- cites for the
4 proposition that cohorts of transgender women often
5 have slightly lower baseline measurements of muscle and 03:47:36
6 strength than control males; right?

7 A Yes, that is what it says.

8 Q Okay. And so that's a sim- -- that's similar
9 to the statement in the Hamilton article; right?

10 MR. FRAMPTON: Object to the form. 03:47:47

11 THE WITNESS: I'm sorry, can we go back to
12 what the Hamilton article says, or could you --

13 BY MR. BLOCK:

14 Q Sorry, I'm -- I just want to -- you know, we
15 looked at two sources that talk about how the baseline 03:47:54
16 measurements of trans women are not always the same as
17 the baseline measurements of control cis men. And we
18 looked at two studies saying that, one was the Hamilton
19 study and one was the Harper study. And all I want to
20 do is add this study as -- this article as a third 03:48:13
21 article making that observation.

22 Would you agree that this article is another
23 article that at least makes the observation that the
24 baseline measurements for trans women appear to often
25 be lower than the baseline measurements for cisgender 03:48:36

Page 268

1 men who are used as controls?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: I -- I think in this article by
4 Hilton, a couple of key points here is where it says
5 "cohorts of transgender women," not saying population 03:48:53
6 representative sampling or anything like that. And
7 then there's a lot of further qualifications that you
8 go on in that sentence emphasizing caution with
9 interpreting these data.

10 BY MR. BLOCK: 03:49:10

11 Q Yeah. Well, so, actually, I have a question
12 for you.

13 So you talk about how these are just cohorts
14 of trans women, not population samples, but you cite to
15 these same articles in support of your argument that -- 03:49:20
16 about the effects of gender-affirming hormones, don't
17 you?

18 A Yes, I cite these articles.

19 Q Okay. So how come -- can't the same caveat be
20 made that whatever conclusions you're drawing about 03:49:39
21 trans women from these articles don't necessarily apply
22 to trans women at a population level?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: These are the best sources of
25 information that we have, and the studies looking at 03:49:54

Page 269

1 changes over time or changes in strength, muscle mass
2 and such that I've cited, that was the purpose of the
3 study, was to evaluate those changes and then
4 statistically apply it to a population whereas those
5 studies were not designed to get a population baseline 03:50:13
6 sampling for normative data.

7 BY MR. BLOCK:

8 Q Okay. Well, that -- I'm glad you made that
9 point because -- let's go to -- to your expert report
10 where -- on page -- on page -- let me make sure I have 03:50:28
11 the right page.

12 So page 2 -- actually, go to page 1, so I'm
13 not missing anything.

14 Let me know when you're at page 1.

15 A So is page 1 Personal Qualifications and 03:51:02
16 Disclosure?

17 Q It is.

18 A Okay.

19 Q So right before the bullet points, you say (as
20 read): 03:51:08

21 "Articles that I have published that
22 are closely related to topics that I
23 discuss in this white paper
24 include..."

25 And then there's a list. Right? 03:51:14

Page 270

1 A Yes.

2 Q And -- and then if you go to the -- the second
3 to last bullet point.

4 A Yes.

5 Q Do you see that? 03:51:26

6 That says (as read):

7 "A study finding (among other things)

8 that height, body mass, and maximal

9 oxygen consumption were higher in a

10 group of male NCAA Division 2 distance 03:51:36

11 runners, while women NCAA Division 2

12 distance runners had higher percent

13 body fat."

14 Do you see that?

15 A Yes. 03:51:48

16 Q Okay. And we discussed this study during our
17 previous deposition. Do you remember that?

18 A Yeah. It's a fun paper.

19 Q Yeah. But we discussed how this data about

20 height, body mass and oxygen consumption was base- -- 03:52:00

21 was data -- baseline data that you took of -- of these

22 athletes, but the purpose of the study was not to do a

23 population-wide, you know, sampling of -- of height,

24 body mass and oxygen consumption; right?

25 A Yes, that is correct. 03:52:22

Page 271

1 Q Okay. So -- so what you just said before,
2 when we were talking about the -- the cohorts of trans
3 women, you had said, well, the purpose of those studies
4 was not to provide population sampling on, you know,
5 the physiological characteristics of -- of the trans 03:52:43
6 women in the study; therefore, you couldn't extrapolate
7 that as a general matter, all trans women were likely
8 to have similar characteristics.

9 Is that -- is that a fair summary of what you
10 had just said? 03:52:59

11 MR. FRAMPTON: Object to the form.

12 THE WITNESS: Yes, that is a fair summary.

13 BY MR. BLOCK:

14 Q But in your description of your study here, do
15 you think a reader, reading that sentence, would think 03:53:10
16 that you are making the statement that as a general
17 matter, on a population-wide basis, you found in your
18 study that height, body mass and max -- maximal oxygen
19 consumption were higher for the male NCAA competitors
20 compared to female NCAA competitors? 03:53:32

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: I'm kind of unclear with what
23 you're trying to ask.

24 BY MR. BLOCK:

25 Q Yeah, so I'm saying that this happened to be 03:53:45

1 the data for a particular cohort that you're doing a
2 different study on; correct?

3 MR. FRAMPTON: Object to the form.

4 THE WITNESS: So, yes, as I've stated, this is
5 a group of male and female Division II distance 03:53:57
6 runners.

7 BY MR. BLOCK:

8 Q Okay. And so that study wouldn't allow you to
9 draw any conclusions generalizable to other males and
10 females about, you know, what their comparative height, 03:54:10
11 body mass and oxygen consumption would be; right?

12 MR. FRAMPTON: Same objection.

13 THE WITNESS: I don't think I've ever
14 purported that that was the purpose of this study.

15 BY MR. BLOCK: 03:54:24

16 Q You don't think that someone reading that
17 sentence, where it says the study -- a study finding
18 these things, you don't think someone reading that
19 sentence would have the impression that that was the
20 purpose of the study? 03:54:40

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: Those were findings of the
23 study. That's what I have states, is those are
24 findings of the study.

25 ///

1 BY MR. BLOCK:

2 Q Was the rest of the -- is the rest of the
3 study relevant to the topic of this case?

4 A You mean is that the male athletes were faster
5 than the female athletes? 03:55:10

6 Q I mean -- what -- what I mean is you -- you --
7 you select this finding from the study, but were any
8 other findings from that study relevant to this case?

9 A Yes, we could say that. For the same heart
10 rate, the men were faster than the women. 03:55:32

11 Q Okay. Okay. Let's go to -- to page 4.

12 A On my declaration?

13 Q Yeah. Or your report.

14 A Yeah, just make sure we're on the same -- so
15 this is the overview? 03:55:54

16 Q Yes. And I just want to direct your attention
17 to the three bullet points that you've listed there.

18 Do you see them?

19 A Yes, I do.

20 Q Okay. Are you offering any expert opinions in 03:56:11
21 this case other than the opinions contained in those
22 three bullet points?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: Well, I -- I mean, those are the
25 basis for everything else, those three bullet points, 03:56:35

Page 274

1 and most of the other information is trying to support
2 and substantiate why I drew those conclusions.

3 BY MR. BLOCK:

4 Q Okay. So -- but there are no -- I appreciate
5 that. 03:56:48

6 There's -- you're not offering an opinions on
7 any other issue, are you?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: Kind of unclear what you're
10 asking. 03:57:07

11 I think it states there fairly clearly what
12 I'm -- the -- the statements I'm trying to make.

13 BY MR. BLOCK:

14 Q Yeah, I'm just trying to nail down the full
15 scope of the expert opinions you're offering here. And 03:57:24
16 so you're not offering any expert opinions on the
17 appropriateness of particular modes of healthcare for
18 trans people; is that right?

19 A That is correct, I'm not offering an opinion
20 on healthcare for transgender individuals. 03:57:45

21 Q Okay. And you are not -- you discuss these
22 bullet points, what you say are advantages, but you are
23 not offering an opinions on whether particular policies
24 are fair or unfair in light of the data that you
25 present here, are you? 03:58:08

Page 275

1 MR. FRAMPTON: Object to the form and scope.

2 Go ahead.

3 THE WITNESS: So I think this comes back to

4 our previous discussion where we discuss the

5 irreconcilable differences between inclusion and 03:58:21

6 fairness.

7 BY MR. BLOCK:

8 Q Yes, it does, which is why I'm coming back to

9 it.

10 So I -- I -- you know, I understand that, you 03:58:37

11 know, you have laid out your criteria, your -- excuse

12 me -- your credentials for proving -- for providing an

13 expert opinion on whether an advantage exists, and so

14 I -- I -- I just want to find out whether or not, you

15 know, the -- in light of that information you present 03:58:58

16 regarding the existence or nonexistence of an

17 advantage, whether a particular policy maker will then

18 decide that something is fair or unfair, is not -- is

19 not something that you are providing an expert opinion

20 on; right? 03:59:18

21 MR. FRAMPTON: Same objection.

22 Go ahead.

23 THE WITNESS: So I'm trying to detail the

24 advantages, the differences between males and females

25 biologically, documenting the advantages in athletic 03:59:30

Page 276

1 performance the males have over female, documenting
2 what we know regarding transgender individuals and
3 their -- the treatments that they might receive and how
4 that would affect athletic advantages, and then
5 bringing up the point that there is, apparently, some 03:59:47
6 irreconcilable differences -- I'm not sure if that's
7 the best way to state it, but I state it in the
8 document -- between goals of inclusion and fairness.

9 BY MR. BLOCK:

10 Q Yeah, I guess -- someone reading your 04:00:00
11 report -- you know, let's say someone reads all the
12 information in the report, absorbs all the facts, you
13 know, and then, you know, is asked, based on all the
14 facts presented in your report, is it fair to include
15 trans girls and women or not to include them, would you 04:00:21
16 have any greater expertise in answering that ultimate
17 question than anyone else who has absorbed the facts
18 you presented in your report?

19 MR. FRAMPTON: Object to the form.

20 THE WITNESS: Are you saying does every piece 04:00:46
21 of knowledge I've ever written put on -- on this
22 document and someone would know everything that I know?

23 BY MR. BLOCK:

24 Q No. I'm saying that based on these facts, you
25 know, someone needs to draw a conclusion about what's 04:01:02

Page 277

1 fair, okay? And so my question is -- you know, I
2 understand that you're providing an expert -- you know,
3 opinions on the -- the -- the -- the facts you say in
4 your report. All my question is that, you know, the
5 second step of drawing a conclusion about what's fair 04:01:18
6 or unfair is not something that you are an expert on;
7 right?

8 MR. FRAMPTON: Object to the form.

9 Go ahead.

10 THE WITNESS: I would hope that someone would 04:01:33
11 read my document, and they're also going to read the
12 document from the other experts, weigh the evidence and
13 make a decision on what is -- what is fair.

14 BY MR. BLOCK:

15 Q And -- and you are not offering, you know, 04:01:52
16 that decision, that ultimate decision, as part of your
17 expert report; right? That's for someone else to
18 decide?

19 MR. FRAMPTON: Object to the form.

20 THE WITNESS: Yes, that is my intention, is 04:02:16
21 that someone else will weigh the information, weigh the
22 data and make their decision.

23 MR. BLOCK: All right. Thank you, Dr. Brown.

24 I have no further questions.

25 MR. FRAMPTON: Anyone else? 04:02:37

Page 278

1 MS. GREEN: This is Roberta Green on behalf of
2 WVSSAC. No questions.

3 THE VIDEOGRAPHER: Can we go off the record,
4 Attorney Block?

5 MR. BLOCK: Sure. Unless anyone else wants to 04:02:52
6 say on the record that they don't have any other
7 questions.

8 MR. CROPP: This is Jeffrey Cropp with
9 Harrison County Board of Education and Dora Stutler. I
10 have no question. 04:02:57

11 MR TAYLOR: Michael Taylor on behalf of the
12 State BOE and Superintendent Burch. No questions.

13 MR. TRYON: Dave Tryon. No questions.

14 MR. FRAMPTON: Hal Frampton for the
15 intervenor. No questions.

16 It sounds like we're done.

17 MR. BLOCK: See you in another two years,
18 Dr. Brown.

19 (Simultaneous speaking.)

20 MS. DUPHILY: Hold on. Let's take this off 04:03:24
21 the record. One second.

22 THE VIDEOGRAPHER: We are off the record at
23 4:03 p.m., and this concludes today's testimony given
24 by Gregory Brown.

25 The total number of media used was eight and 04:03:31

Page 279

1 will be retained by Veritext Legal Solutions.

2 (TIME NOTED: 4:03 p.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, GREGORY BROWN, Ph.D., do hereby declare
2 under penalty of perjury that I have read the foregoing
3 transcript; that I have made any corrections as appear
4 noted, in ink, initialed by me, or attached hereto;
5 that my testimony as contained herein, as corrected, is
6 true and correct.

7 EXECUTED this ____ day of _____,
8 20____, at _____, _____.
(City) (State)

9
10
11
12 _____
GREGORY BROWN, Ph.D.

13 Volume I
14
15
16
17
18
19
20
21
22
23
24
25

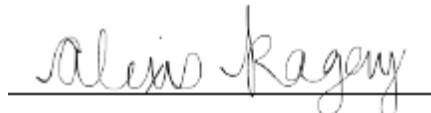
1
2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were placed under oath; that a record of
9 the proceedings was made by me using machine shorthand
10 which was thereafter transcribed under my direction;
11 further, that the foregoing is an accurate
12 transcription thereof.

13 I further certify that I am neither financially
14 interested in the action nor a relative or employee of
15 any attorney of any of the parties.

16 IN WITNESS WHEREOF, I have this date subscribed
17 my name.

18
19 Dated: April 5, 2022
20

21 
22

ALEXIS KAGAY

23 CSR NO. 13795
24
25